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Five-Year Review of the Umbrella Final Agreement Implementation Plan and Yukon First Nation Final Agreement Implementation Plans for the First four Yukon First Nations

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Yukon

Teslin Tlingit Council

Canada

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et des quatre premières ententes définitives
conclues avec des Premières Nations du Yukon

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Executive Summary

Context

The Yukon First Nation Final Agreement and the Umbrella Final Agreement (UFA) Implementation Plans require the parties to conduct a five-year review of the adequacy of the Plans and of the funding provided under the Plans. This report focuses on the five-year review of the implementation of the UFA and the first four Yukon First Nation Final Agreements (First Nation of Nacho Nyak Dun, Teslin Tlingit Council, Vuntut Gwitchin First Nation and Champagne and Aishihik First Nations). The review was undertaken by the Implementation Review Working Group (IRWG) which was comprised of representatives of each of the first four First Nations, the Council of Yukon First Nations (CYFN), Government of Yukon (Yukon) and Government of Canada (Canada). Other First Nations with Final Agreements were invited to attend all sessions of the IRWG.

The process for conducting the review included the preparation of status reports that detail the current status of individual Final Agreement and UFA obligations and implementation plan activities; identification of implementation successes and issues; and suggested amendments to the Implementation Plans. Boards, councils, commissions and committees established pursuant to the UFA and the Final Agreements were solicited for input on implementation progress, issues and concerns as were government departments (including First Nation government departments) with a direct role in the implementation of the Agreements.

Findings

General Observations

The IRWG notes that in the five years covered by the review (February 1995 to February 2000), there have been enormous changes in the Yukon. Noticeable changes include the many partnership approaches that are emerging as a means to address a wide range of management issues. In addition, self-governing Yukon First Nations have made major advances in implementing their Self-Government Agreements. Although the Self-Government Agreements were not within the scope of the five-year review, the IRWG nevertheless believes it is important to note the very significant progress by First Nations in the transition from *Indian Act* bands to self-governing First Nations. This includes the establishment of new governance and administrative structures, development of enhanced financial management and accountability regimes, the enactment of critical legislation, and the successful negotiation of programs and services transfers and tax sharing agreements.

Implementation Successes

Some noteworthy final agreement successes identified by the IRWG include the development by First Nations of new departments to address their land and resource responsibilities (including heritage resources); the Settlement Land surveys program; establishment of key public boards, councils, commissions and committees; development of a First Nation population data base; the transition to the new salmon management regime; the Yukon River Salmon Harvest Study; cooperative communication initiatives between the parties; progress in the area of economic opportunities; development of public service employment plans; implementation of National Parks obligations; cooperative efforts and good progress in establishing Special Management Areas (SMAs); progress in a wide range of renewable resources management initiatives through cooperative efforts between governments; progress in a number of heritage program initiatives; successful implementation of the property tax assistance program; and development of protocols, sharing accords and intergovernmental accords. Although implementation issues remain with respect to forest management programs, the IRWG has also noted advances and successes in this area.

With respect to public boards, councils, commissions and committees, generally speaking, the IRWG is of the view

that these bodies have been successful in fulfilling their roles. Some key accomplishments of these bodies over this period are summarized in chapter 5 of the report. There was some concern with the progress achieved by the Yukon Land Use Planning Council (YLUPC) in its initial years but also a finding that the situation has much improved over the last two years. Renewable Resources Councils (RRCs) and the Fish and Wildlife Management Board (FWMB) have been particularly appreciated for the way in which they have stepped into their respective roles.

Implementation Issues

The IRWG notes that despite the significant progress, there are also implementation concerns. A number of initiatives have progressed more slowly than originally envisioned by the parties. Problem areas discussed in the report include regional land use planning, development assessment process legislation, development of a trapline holders compensation process, and equitable distribution of heritage management resources. There are initiatives already under way to address the first three issues, and the IRWG recommends that the Implementation Working Group (IWG) convene a meeting of the parties to initiate action to address the heritage resource issue.

Other major issues identified by the IRWG include First Nation and RRC concerns with respect to consultation on forestry policy and forestry resources, the forestry management planning process and forest firefighting priorities. Since these concerns have persisted for some time, the IRWG recommends that the IWG bring the parties together to begin the process of clarifying and resolving these issues. The "Consultation" requirements of the agreement are also an area that continues to create controversy and concern. The IRWG recommends in the report that where problems persist, the parties in question develop consultation protocols that set out mutually acceptable steps to ensure the obligation to consult is met.

Adequacy of Implementation Funding

Several areas of concern were identified by the IRWG in the course of the review. These include adequacy of funding for First Nation implementation, for RRCs and for the Training Policy Commitee (TPC). The parties were able to address the adequacy of First Nation funding through the Northern Affairs Program Transfer Agreement, a solution which not only benefited the first four First Nations, but applied equally to the subsequent three First Nations with Final Agreements as well. With respect to RRC funding, the IRWG recommends that Canada consider the request for increased funding on an immediate basis. As for the review of the TPC request, a number of unresolved questions were raised about the Committee's role, mandate and funding. The IRWG recommends that the parties review the mandate and the work plan of the TPC in consultation with the Committee to determine a realistic work plan and to resolve the issues around the funding for this body.

CYFN has expressed that its implementation funding is inadequate to meet its on-going implementation responsibilities and will present its case for consideration to the IWG.

Amendments

The IRWG recommends a number of amendments to the Implementation Plans of the first four Final Agreements. Most of these advocate replacing existing activity sheets with improved ones similar to those negotiated in more recent Final Agreements.

Conclusions

The IRWG's overall conclusion is that the first five years of implementation have been positive with considerable progress being achieved in implementing the very complex and broad Final Agreements. The Final Agreements have worked well for Yukon First Nations, raising their profile, increasing their influence and ensuring them a greater voice in issues that affect their lives. The Agreements have also helped to create positive government-to-government relations between Yukon First Nations and Yukon and federal governments, and are developing into a partnership approach to manage issues of mutual concern. The IRWG notes implementation plans have been important for tracking obligations and focussing the parties on action items.

Foreword

On February 14, 1995, history was made in Yukon when the Umbrella Final Agreement (UFA), as well as Final and Self-Government Agreements for Champagne and Aishihik First Nations, Teslin Tlingit Council, Vuntut Gwitchin First Nation and First Nation of Nacho Nyak Dun (first four Yukon First Nations), came into effect.

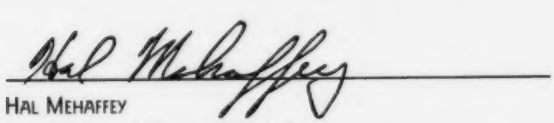
An Implementation Plan accompanies the UFA and each First Nation's Final and Self-Government Agreement to explain and identify obligations and activities. The Plan also identifies who is responsible and the time frames required to fulfill. Final agreement obligations and activities. One obligation of the parties to the Agreements, that is the Government of Canada (Canada), Government of Yukon (Yukon), the Council of Yukon First Nations (CYFN) and the respective Yukon First Nation, is to conduct a five-year (and nine-year) review to determine the adequacy of both the provisions of the Final Agreement Implementation Plans and of the funding provided under those Plans. There is also a requirement for a five-year review of the Self-Government Agreements and Implementation Plans. It was agreed that the self-government review would be delayed to coincide with the nine-year review of the Final Agreements.

To meet the challenge, a five-year Implementation Review Working Group (IRWG) was formed in early 1998. The work required was extensive. Each Final Agreement Implementation Plan contains some 170 common obligations which require individual review to verify their status for each Final Agreement. In addition, the status of hundreds of specific obligations had to be covered as well as some 80 UFA obligations reviewed. Special attention was given to the issues of the public boards, councils, committees and commissions. All had an opportunity to provide input into the review process, and most participated. Assessing the adequacy of funding, especially the adequacy of First Nation implementation funding, was also a time consuming and challenging task.

While the parties have encountered problems of varying degrees in the initial five years of implementation, there has also been very positive progress on a number of fronts. The IRWG felt it was important to identify both the successes achieved and the issues remaining. Some items identified as concerns are currently being addressed by the parties. Where no course of action has been implemented to resolve outstanding issues, the IRWG has, whenever practicable, endeavored to make recommendations to address these issues. In addition, amendments to the Implementation Plans have been proposed.

The IRWG would like to thank the various boards and councils for their timely input and thoughtful insights as well as First Nation, federal and Yukon government officials for their time, patience and assistance in collecting the information vital to the review process.

The Implementation Review Working Group submits the report to the Parties to the Umbrella Final Agreement and the first four Yukon First Nations for their consideration.



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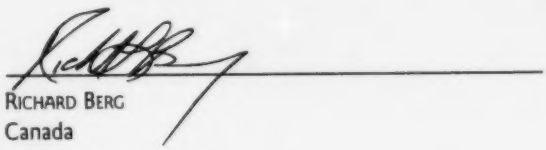

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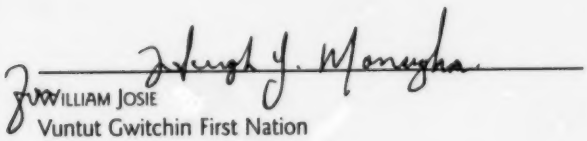

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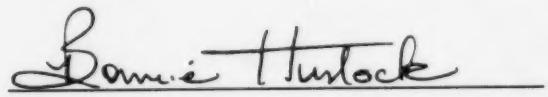

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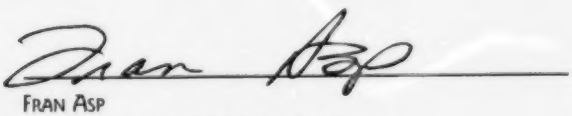

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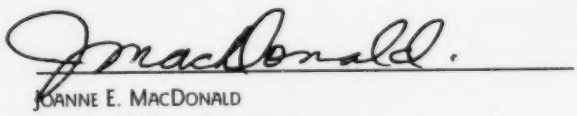

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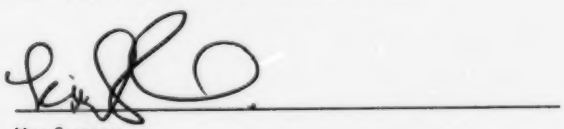

KIM SMARCH
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December 6, 2000

Introduction

After nearly 22 years of negotiations, on May 29, 1993, the Council for Yukon Indians (now known as the Council of Yukon First Nations (CYFN)), the Government of Yukon (Yukon) and the Government of Canada (Canada) signed the Council for Yukon Indians Umbrella Final Agreement (UFA) and accompanying Implementation Plan. On the same day, Canada, Yukon and the first four Yukon First Nations which includes Champagne and Aishihik First Nations (CAFN), First Nation of Nacho Nyak Dun (NND), Teslin Tlingit Council (TTC), and Vuntut Gwitchin First Nation (VGFN), signed Final and Self-Government Agreements and their accompanying Implementation Plans. These Agreements came into effect on February 14, 1995. Each Yukon Final Agreement incorporates the provisions of the UFA.

For the first time in Canada, comprehensive land claims and self-government agreements were jointly concluded. The Yukon First Nation Self-Government Agreements provide for the transfer of a wide range of powers to Yukon First Nations. The challenge of implementing these Agreements and developing governing structures has been a monumental task for the first four Yukon First Nations and has frequently occupied them as their highest priority. These operational priorities have often made it difficult for the first four Yukon First Nations to devote time to the five-year review process.

The Self-Government Agreements are subject to a separate review which the parties have agreed to postpone to coincide with the nine-year review of the Final Agreements.

On October 1, 1997, Final and Self-Government Agreements for Little Salmon/Carmacks First Nation (LSCFN) and Selkirk First Nation (SFN) came into effect, followed by the Tr'ondëk Hwëch'in (TH) Agreements on September 15, 1998.

At the date of this report, there are six Yukon First Nations that have not concluded negotiations and one for whom negotiations have concluded, but ratification of its agreements has yet to take place. The fact that these seven agreements remain outstanding has effected the implementation of the UFA and the first four Yukon First Nations Agreements. In particular, this has made it difficult to assess, with certainty, the full future impact on boards, councils, committees and commissions (herein after refered to as boards) established under the UFA. It has reduced the opportunities to exercise economies of scale and/or full efficiencies in the resolution of common issues. It is also probably fair to say that this has, among other factors, had some negative impact on progress with respect to forestry, land use planning and certain other programs. These factors have been taken into account by the Implementation Review Working Group (IRWG) in its assessment of the progress and success of the first five years of implementation.

The interval of almost a year and a half between the 1993 signing of the UFA and the first four Yukon First Nation Final Agreements and their effective date in 1995 has also had an effect on the implementation of the Final Agreements, particularly for the First Nation governments. The primary reason for this extended time frame was the requirement of the UFA that the *Yukon Surface Rights legislation* had to be enacted no later that the effective date of the Yukon *Land Claims Settlement legislation.* Drafting of the Surface Rights legislation began in June 1993. Parliament assented to the bill on December 15, 1994. It took several more months to complete several other issues before an effective date for the first four Final Agreements and Self-Government Agreements could be declared.

In the interim, the first four Yukon First Nations found it difficult to maintain the momentum that they had built up during the negotiations to finalize their respective agreements. As well, access to negotiation loans ceased with the signing of the Agreements and, implementation funding provided for under the settlement agreements was set to begin only on the effective date. First Nations found it difficult to retain their experienced and knowledgeable staff on whom they had hoped to rely on for the implementation of their Agreements.

To help alleviate the situation, in June of 1994, Canada agreed to advance a portion of the one-time implementation funding to each Yukon First Nation. While this helped bridge the gap, it also depleted funding available for start-up costs at the effective date which resulted in additional challenges during the initial implementation period for Yukon First Nations. The IRWG believes that it would have been better to build in a transition period to help fill the vacuum as the necessary legislation was being developed.

For the three subsequent Final Agreements, the interval between the signing and effective dates has been approximately two months. Similar time frames are expected for future agreements and so the delays experienced by the first four First Nations should not be repeated again in the Yukon.

The Yukon First Nation Final Agreements do not require the establishment of an Implementation Committee as do a number of other land claim agreements. Instead, under the provisions of each Implementation Plan, each Party agreed to appoint a representative to act on its behalf to resolve issues arising from the implementation of the Agreements. To monitor implementation and address implementation issues, an informal multi-party implementation working group made up of these representatives or their delegates was established. The current Implementation Working Group (IWG) includes representatives from each of the seven Yukon First Nations with Final Agreements, the CYFN, Yukon and Canada. The group plans to meet regularly (three times per year) to review progress in implementation, determine priorities, and identify and address issues.

The initial IWG was formed in the fall of 1994 before the effective date of the first four Yukon First Nation Final Agreements. This early formation helped considerably in preparing the parties for the effective date of the Agreements. In 1996, an interim review of implementation obligations recorded the completion of one-time activities and determined the overall status of implementation at that time.

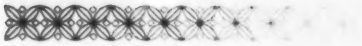
The parties to the Final Agreements and UFA Implementation Plans are obliged to review the adequacy of the provisions of the plans and of the implementation funding provided under the Plans in the fifth and ninth year following the effective date. To carry out the five-year review on the first four Final Agreements and the UFA, the IRWG, consisting of representatives of the first four Yukon First Nations, the CYFN, Yukon and Canada, was formed.

IRWG members are drawn from the members or designates of the IWG. Representatives of LSCFN, SFN and TH were invited to participate as observers in the process. In addition, all 14 Yukon First Nations were invited to attend the presentations made by the boards to the IRWG on October 19, 1999.

The five-year review was seen as an opportunity to assess the effectiveness of implementation and to recommend to the parties any amendments that would improve implementation of the Final Agreements. It was also an opportunity to review how various boards, government departments, agencies and other implementing bodies are progressing with their final agreement obligations as outlined in the Final Agreement and UFA Implementation Plans.

The main objectives of this review were to:

- determine the current status of Final Agreement and UFA obligations and activities;
- provide opportunity for boards, government departments and government agencies to discuss land claim obligations and future direction for implementation;
- identify implementation successes and substantive implementation issues;
- determine the adequacy of implementation funding provided under the Implementation Plans;



- identify potential amendments to the Implementation Plans; and
- provide recommendations that will help address concerns, issues or conflicts that arise from the activity review.

The parties to the agreements intended the reviews to be coordinated with the re-negotiation of the First Nation Self-Government Financial Transfer Agreements (FTAs) so that results of the five-year review could be incorporated into the FTAs. The IRWG recognized that the most likely issue to affect the First Nations FTAs would be the adequacy of funding. As a result, adequacy of First Nation funding was identified as a priority issue for the IRWG early in the process.

Chapter 1

Process for Completing the Review

The IRWG began by drafting general review guidelines (see Appendix 1).

The first step in the process was to review activities as set out and described in the activity sheets annexed to each Implementation Plan. The representatives for Canada and Yukon undertook to consult with their respective government departments and prepare updates identifying the current status of all government obligations and activities. The Council of Yukon First Nations (CYFN) and each of the first four Yukon First Nation representatives committed themselves to completing internal consultations to determine the status of their obligations and activities. In addition, all the interested government departments and Yukon First Nations were invited to identify implementation issues and to report on successes.

With respect to boards, the IRWG took care to ensure all of these implementing bodies had an opportunity to provide input. As a first step, each of these bodies were invited to provide a written submission outlining their views on implementation to date, including the adequacy of the funding they received to carry out their obligations. Following the receipt of these submissions, all bodies were invited to make an oral presentation to the IRWG. Almost every implementation body provided written comments, and nine responded to the invitation to make an oral presentation. These written submissions and oral presentations have been taken into account by the IRWG in this report.

Adequacy of First Nation Final Agreement implementation funding was a particularly challenging area. The funding allocated to the first four Yukon First Nations in the Implementation Plans was in negotiated amounts which were not directly linked to any specific First Nation implementation obligation. Thus, there were no agreed-upon criteria available to assess adequacy. After considerable debate, it was agreed that as a first step, a costing exercise be conducted on a "without prejudice" basis to determine if it was possible to agree on a reasonable base level of financial resources necessary for Yukon First Nations to address their implementation obligations adequately. The First Nation of Nacho Nyak Dun (NND) took on this task on behalf of the first four Yukon First Nations. (A more detailed account can be found in chapter 4 of this report.)

The IRWG met on a number of occasions in Whitehorse to develop guidelines, terms of reference and work plans, to discuss methodology and to review status reports, issues and amendments. On October 19, 1999, the IRWG heard presentations from nine implementing bodies, including all four Renewable Resources Councils, the Yukon Land Use Planning Council, Training Policy Committee, Yukon Heritage Resources Board, Fish and Wildlife Management Board, and the Yukon Geographical Place Names Board. The presentations by these public structures were thoughtful and constructive and provided the IRWG with an appreciation of the challenges and concerns that these public structures face in addressing their mandates. Chapter 5 of this report is devoted to findings and recommendations with respect to these public structures.

To carry out the activity-by-activity review of the Implementation Plans, the IRWG used and expanded on the status reports that were jointly developed to assess the progress of implementation reported on in 1996. These reports consist of a summary document for the Umbrella Final Agreement (UFA) and each Final Agreement Implementation Plan, listing all of the obligations (projects) which the parties agreed needed to be evaluated and updated. Each entry in the status reports corresponds to a Final Agreement obligation and can generally be referenced in either an implementation plan activity sheet, annex or payment. These entries include a reference to the relevant UFA or Final Agreement clause, a brief description of the obligation or project, responsible party or parties, the current status and any proposed action or follow-up.

Over the years, these status reports have proven an invaluable tool for monitoring implementation of the agreements and for identification of issues both in the joint IWG process and by parties individually in managing their internal data bases. For the five-year review, the status reports were

the main tool for assessing the status of individual implementation activities and for identifying implementation successes and issues.

Updating these reports for the five-year review was a considerable task. More than 1000 obligations were identified for review out of the four Final Agreements and Umbrella Final Agreement. While many of these obligations were common to all four Yukon First Nation Final Agreements, most had to be checked individually to determine whether the implementation status was the same for each Agreement. Through this review, the IRWG was able to confirm the completion of 121 one-time activities and identify 12 outstanding common implementation issues of a substantive nature which are noted in this report.

The parties made efforts to reach consensus on the content of the status reports. Where consensus was not possible, it is reflected in the status report.

Copies of the completed status reports are available on request by contacting Yukon Land Claims and Implementation Secretariat.

Chapter 2

Implementation Successes

Although the five year review is intended to report on implementation of the Umbrella Final Agreement (UFA) and the first four final land claim settlement agreements, the Implementation Review Working Group (IRWG) felt that the reader should be made aware that major progress has been achieved in implementing the Self-Government Agreements which are inextricably linked to implementation of the Final Agreements.

First Nation representatives on the IRWG report that their First Nations have made major progress in the transition from *Indian Act* bands to self-governing First Nations. First Nation administrations have been reorganized, departments and agencies created and new processes developed to address new responsibilities. Legislation critical to implementation of self-government obligations has been enacted by First Nation governments while more is under development. Measures have been taken to ensure financial accountability of First Nations to their citizens, and financial management procedures have been implemented to ensure appropriate management of First Nation assets. Some First Nations have also been busy improving capital infrastructure. Several Yukon First Nations, such as Champagne and Ashihik First Nations (CAFN) and Vuntut Gwitchin First Nation (VGFN), have constructed new government administration buildings which incorporate up-to-date technologies, through the careful management of program operations funding. All these achievements are sources of considerable pride to these First Nation governments.

Government and First Nation governments have successfully negotiated tax collection and tax sharing agreements, as well as a number of key Programs and Services Transfer Agreements (PSTAs). Considerable work has also gone into the negotiation of government-to-government accords, Memoranda of Understanding (MOU) and protocols aimed to improve working relationships between various parties, some of which are noted below.

Successes in self-government implementation have contributed to that of final agreement implementation. For example, the successful negotiation of the Northern Affairs PSTAs has increased First Nations' capacity to deal with their Final Agreement land and resource management obligations. At the same time, it has helped the parties address the First Nations' Final Agreement implementation funding concerns. Efforts by various parties to establish new working relationships have contributed to progress in land use planning, integrated resource management planning, and National Parks and other Special Management Area (SMA) management planning as well.

As a general observation on implementation, the IRWG believes it is worth noting that, in the first five years of implementation, neither the Dispute Resolution Board nor the Surface Rights Board has been required to render decisions on disputes. To date, the parties have managed to resolve the issues on their own.

Some noteworthy successes in final agreement implementation identified by the IRWG include the following.

Yukon First Nation Land and Resources Departments

- The first four Yukon First Nations have successfully established land and resources departments to manage and administer their Settlement Lands and related resource and harvest management activities, including heritage resources. This is a major accomplishment as these areas of responsibility were new for them.
- The Champagne and Ashihik First Nations had some special challenges in this regard, as its citizens are located in five communities widely dispersed throughout the Traditional Territory. To ensure local involvement in initiatives and decisions that affect their communities, the CAFN has created a Lands Committee that works closely with community planning teams to oversee the management of Settlement Lands.

Land Survey Program

◊ Natural Resources Canada, Legal Surveys Division (LSD), has been running a highly successful land survey program. Not only is excellent progress being made on the field surveys, but the LSD has been very active in assisting Yukon First Nations to take advantage of economic opportunities resulting from the survey program. To date, $2.83 million of the approximately $14 million spent on the survey program has gone to the direct benefit of First Nation companies or individuals. Settlement Land surveys have been completed for the First Nation of Nacho Nyak Dun (NND) and are nearing completion for CAFN, Teslin Tlingit Council (TTC) and VGFN. Good progress has also been reported on Little Salmon/Carmacks First Nation (LSCFN), Selkirk First Nation (SFN) and Tr'ondëk Hwëch'in (TH) surveys. In addition, the LSD has been very prompt and innovative in addressing technical survey problems as they arise. This has been a significant contribution to the success of the survey program.

Boards, Councils, Commissions and Committees

◊ All key boards, except for the Dispute Resolution Board (DRB) which was activated in May 1996 and Yukon Development Assesment Board (YDAB) which will be established pursuant to the *Development Assessment legislation*, were established in the first year of implementation. The overall conclusion of the IRWG is that, in general, these boards are doing a good job fulfilling their mandates. First Nation IRWG representatives have noted particular satisfaction with the role that the Fish and Wildlife Management Board (FWMB) and the local Renewable Resources Councils (RRCs) have played in giving local communities a voice in renewable resource management decisions.

New Salmon Management Regime

◊ The transition of salmon management in the Yukon from the Department of Fisheries and Oceans (DFO) to the Salmon Sub-Committee (SSC) has been an implementation success. There has been good cooperation between DFO and the SSC to bring about the change. DFO has encouraged the SSC to take a leadership role resulting in greater involvement of local communities and RRCs in salmon management issues and decisions.

Yukon River Salmon Harvest Study

◊ DFO and the Council of Yukon First Nations were very successful developing terms of reference, identifying a contractor and getting the Yukon River Salmon Harvest Study under way. The contract was designed so that most of the work (and economic benefit) went to local communities. The result has been a high level of confidence in the numbers that are being generated. The study is currently in its fifth year.

First Nation Populations Data Base

◊ Joint efforts by Yukon First Nations and the Financial Relations and Program Transfers Directorate, in the Department of Indian Affairs and Northern Development (DIAND) Regional Office, have resulted in the successful development of a First Nations population data base. Although not a specific requirement of the Final Agreements, development of the data base is an example of the benefits of a cooperative effort between the parties. The data base will make it much easier for First Nations to meet their responsibility under the Agreements for maintaining current information and accurate citizen and beneficiary lists. The easy access afforded by the data base will assist all governments in Yukon with the delivery of their program responsibilities. It will also provide necessary information for the development of intergovernmental fiscal relations where population is a factor.

Tripartite Communications Committee

- This informal committee was established by the Council of Yukon First Nations, DIAND Region and Yukon Communications staff to address the need for coordination of press releases and other communications relevant to the Final and Self-Government Agreements. There has been a high level of good will and cooperation between the parties in planning communication events and press releases and in addressing communications issues.

Forestry

Although forestry issues rank high among Yukon First Nation implementation concerns, several areas of success have also been noted.

- First Nations indicate that the training provided by DIAND Forest Resources to train and certify Extra Fire Fighters (EFF) has been very successful. Several hundred First Nation EFF have been certified through this training.
- The development of Forest Management Plans in the CAFN and TTC Traditional Territories has been initiated. These First Nations, DIAND, Yukon and the local RRCs have signed protocol agreements to complete these plans.
- A cooperative effort between the NND and DIAND Forest Resources has resulted in a significant growth in the First Nations forest management capacity.
- Approximately 75 percent of those employed to fight forest fires have been First Nation citizens.
- A Forest Management Planning team established for the CAFN Traditional Territory has worked very successfully to identify priority areas for potential forest harvesting on the non-settlement and Settlement Land; also "Fire Smart" projects conducted at Canyon and Champagne to reduce the risk of forest fires in these communities were considered a great success.

Financial Payments:

- Under the Final Agreements or accompanying Implementation Plans, Yukon First Nations are entitled to financial compensation payments, implementation funding and other grants. Annual implementation grants are also provided to the Council of Yukon First Nations. All of these payments have been provided by Canada according to the requirements of the Agreements.

Economic Opportunities

- Economic Opportunities Plans (Umbrella Final Agreement 22.3.1) – A cooperative tripartite approach among Canada and Yukon and interested Yukon First Nations has resulted in successful preparation of several First Nation economic development opportunities plans. The CAFN plan has been completed and approved by CAFN; a draft plan has been developed for VGFN and currently awaits further refinement; LSCFN is in the planning process. TTC, NND, SFN and TH have deferred this planning, as they want to coordinate it with other planning initiatives such as regional land use plans and regional economic development plans. In the Yukon-VGFN Intergovernmental Accord, the parties have identified work on a North Yukon Economic Development Agreement (EDA) as one common priority. The recently signed accord between Yukon and TH also recognizes the development of an EDA as a common priority.
- The transfer of control and administration of the Yukon onshore oil and gas resources, from Canada to the Yukon government took place in 1998. *The Oil and Gas Act* was passed by the Yukon legislature with the full support of all 14 Yukon First Nations.
- The oil and gas Memorandum of Agreement, signed January 24, 1997 by the Yukon government with all Yukon First Nations contained some additional arrangements for sharing the accrued royalties (called the Kotaneelee Fund) that Canada remitted to Yukon on the transfer date. Ongoing Crown royalty sharing arrangements are under discussion with Yukon First

Nations and payments of the Kotaneelee Fund have been made to Yukon First Nations. The amount of the net funds available for sharing under the Kotaneelee Fund is in excess of $4 million.

- With the new management of these resources, Yukon has proceeded with the sale of oil and gas rights in the Eagle Plain and Peel Plateau basins in consultation with the VGFN. Another sale of oil and gas rights in the Eagle Plain and Peel Plateau basins has recently taken place. Through review with Yukon First Nations, new areas are being identified that can be considered for disposition.
- Economic Benefits Agreements were implemented by Yukon to provide local hiring and contracting opportunities for the construction of the Old Crow School, the Mayo School and the Ross River School.
- The Yukon Finance Department provides ongoing advice to First Nations and the Trustees of the Training Trust and the Fish and Wildlife Enhancement Trust on investment policy matters. The department's director of Investments and Debt Services helped the VGFN and CAFN establish investment policies. Work in this area has also started with NND.
- The *Wilderness Tourism Licencing Act*, enacted by Yukon to support the wilderness tourism industry, guarantees a percentage of licences and permits issued under the Act to Yukon First Nations.

Training and Professional Development (22.4.1)

- The Yukon government undertook joint planning with NND, TTC, CAFN, VGFN and the CYFN to complete a Yukon-wide Representative Public Service Plan (RPSP). An implementation coordinator and a training and development consultant have been hired to continue working on the RPSPs and to implement strategies. The work is being assisted by a land claims coordinator. Individual departments have been asked to prepare implementation plans and a tracking system has been put in place by Yukon to monitor the effectiveness of the RPSPs.

Overall, First Nation representation in the Yukon government stands at 12 percent, with 22 percent or more in departments where the majority of employees are located in the communities (e.g. Community and Transportation Services). Yukon's First Nation Training Corps program and other temporary assignments are providing training in forestry, social work, renewable resources conservation, archaeology, airport management and information technology. Short-term consulting assignments and joint initiatives between the Yukon and First Nation governments are providing technical assistance, program training plans and course work development. Yukon also sponsors training courses for First Nations on specific subject matters such as supervisory skills, records management, Geographical Information System (GIS) mapping and building maintenance. Apprentice training, job-shadowing opportunities and secondments to and from First Nation governments are also part of the RPSP program.

- Federal departments with a presence in the Yukon, led by the Public Service Commission and Treasury Board, worked in close consultation with the first four Yukon First Nations to draft a plan to address representative First Nation employment in federal government departments. While this plan has not been formally approved and implemented, federal departments in the Yukon have, nevertheless, been taking a number of initiatives to increase Aboriginal employment to representative levels. For example, efforts are being made to increase Aboriginal employment and capacity through Aboriginal exclusive job competitions, student work assignments and summer employment opportunities, job exchanges and training and development programs. In addition, all new job descriptions are reviewed to ensure they are free of bias that would disadvantage Aboriginal people. At DIAND Regional Office, the largest federal government employer in the Yukon, 22 percent of the work force currently consists of Aboriginal people.
- Upon completion of the Yukon First Nation training plans, which were assisted by the Training Policy Committee, First Nations received substantial financial assistance from the Yukon Indian Peoples Training Trust for implementation training for staff.

National Parks

Vuntut National Park

- Implementation of the Vuntut National Park regime has been a significant success. Progress has been achieved through close cooperation among the interested parties, Parks Canada, the VGFN and the North Yukon RRC. This working relationship is guided by a Memorandum of Understanding developed by the parties. Three Vuntut Gwitchin citizens have been hired by Parks Canada to be involved in the management of Vuntut National Park, one of whom (a park warden) has been temporarily seconded to VGFN as a conservation officer.

Kluane National Park

- Parks Canada and CAFN have developed a very positive working relationship in addressing their obligations under the CAFN Final Agreement. CAFN has been actively involved in the development of the Kluane National Park Management Plan and Ecological Integrity Statement (EIS) and of interpretive programs presenting CAFN cultural heritage to park visitors. All are very pleased with the results. The Kluane National Park Management Board has also been positively engaged in park management and is making valuable contributions.

Special Management Areas

In each Yukon First Nation Final Agreement there are specific provisions for the establishment of Special Management Areas (SMAs) and development of management plans for these areas. Cooperative efforts between the parties has produced good results on many fronts.

- Joint efforts among Yukon, Canadian Wildlife Services, Yukon First Nations and the respective RRCs have resulted in the completion of management plans for the Nisutlin Delta National Wildlife Area (TTC) and for the Fishing Branch Ecological Reserve and adjacent Settlement Lands (VGFN).
- Following on a statement of intent in the VGFN Final Agreement, the Vuntut Gwitchin and Yukon governments have agreed on the area to be protected by the Fishing Branch Wilderness Preserve and Habitat Protection Area that surrounds the Ecological Reserve and adjacent Settlement Lands. This is a major accomplishment and cause for celebration in Old Crow by the community and the Yukon and Vuntut Gwitchin governments.
- Combined efforts by Parks Canada, Yukon, VGFN and the North Yukon RRC have resulted in major progress in the development of an integrated management plan for the Old Crow Flats SMAs.
- Yukon and the affected Yukon First Nations report significant progress on the development of management planning for the Ddhaw Ghro and Horseshoe Slough Habitat Protection Areas (NND) and the Sha'washe SMA (CAFN).

Heritage

Heritage is a very important program area for Yukon First Nations as witnessed by the entire chapter in each Final Agreement devoted to this issue. While there are some implementation concerns in this area (see Chapter 3 of this report) there have also been some very positive developments.

- The Bonnet Plume (NND) and Tatshenshini Rivers (CAFN) have been designated as Heritage Rivers. A management plan for the Bonnet Plume has been successfully completed with good progress also reported on management planning for the Tatshenshini.

- Champagne and Aishihik First Nations have developed a very active First Nation heritage program. The heritage provisions of the CAFN Final Agreement affords the opportunity for CAFN to become involved in a broad range of archaeological and oral history projects. Most recently, CAFN has been faced with new challenges, such as the discovery of *Kwaday Dan Sinchi'* (which literally means 'long ago person found' in Southern Tutchone language) this past summer in Tatshenshini-Alsek Park. This ancient person presents a window into the past, with an unprecedented educational opportunity and a chance to bring First Nations together. Ancient hunting artifacts melting out of alpine ice patches in CAFN Traditional Territory encourage other opportunities. The CAFN goal is to have these outstanding discoveries from the past contribute to the future.
- Any heritage project related to CAFN or its traditional territory is seen as an opportunity for cultural education and a chance to document history and culture. The program sponsors summer and spring break culture camps where students can learn about traditional practices.
- Through the joint efforts of VGFN, Yukon and the Yukon Heritage Resources Board, management plans for Rampart House and Lappierre House have been developed and implemented. Research has also been conducted in a number of other areas, including in the region of the Dempster Highway, along with extensive oral history research throughout the Vuntut Gwitchin Traditional Territory. This research is directed to heritage resources that are very important to the Vuntut Gwitchin and Yukon citizens alike.
- Yukon Heritage Branch and the NND are sharing costs for preparation of the Lansing Heritage Site management plan which is expected to be completed next year.
- Discussions are well under way among the federal, Yukon and VGFN governments on plans to build a facility in Old Crow that will combine a display of Bering and Vuntut Gwitchin cultural materials and a visitor reception center for the Vuntut National Park.
- A very aggressive heritage program has been implemented by VGFN with significant progress reported on a number of fronts, including documentation of Vuntut Gwitchin heritage resources in Canada and beyond, with arrangements made for access and display of these materials as appropriate, development of policies and procedures by VGFN to regulate heritage and archaeological research on VGFN Settlement Land, efforts by Elders to document the traditional names for geographical locations and features throughout the Vuntut Gwitchin Traditional Territory, and develop a permanent written record of the verbal history of the Vuntut Gwitchin Traditional Territory.
- Yukon, Yukon First Nations and the Tetlit Gwich'in have jointly developed procedures to manage and protect Yukon First Nation burial sites outside of a recognized cemetery throughout the Yukon.

Renewable Resources Management

- Renewable Resources Councils (RRCs) have been an effective means of providing local input into fish and wildlife management programs, policies and legislation in First Nation traditional territories, and in influencing critical fish and wildlife management decisions. In the Mayo District RRC, incorporation of one member nominated by the Tetlit Gwich'in to the RRC for Primary Use Area issues, has improved coordination of wildlife management issues across the Yukon-Northwest Territories boundary. In the VGFN Traditional Territory, an accord has been worked out between the RRC and the Vuntut Gwitchin government that outlines their working relationship.
- Cooperative efforts between Government and Yukon First Nation governments in local renewable resource management have increased considerably as a result of the land claim settlements.
- Cooperative efforts by CAFN, LSCFN, and Yukon have produced an agreement on sharing the bison harvest.
- Yukon, CAFN and the Alsek RRC have successfully completed a draft Aishihik Integrated Wildlife Management Plan and a moose study in the Alsek area.

- Yukon has taken a number of initiatives to support cooperative management of the local fish and wildlife resources in the traditional territories, including:
  - the development of protocols, information sharing and project partnerships with TTC, NND and VGFN governments to facilitate the acquisition and sharing of land and natural resources data;
  - publication of land claims information including hunting and fishing rights and responsibilities of First Nation people as part of the annual fishing, hunting and trapping regulation synopsis provided when hunting, trapping or fishing licences are issued; and
  - staffing of a regional biologist and technician/ conservation officer for the Regional Management Office, Northern Tutchone Region.
- VGFN has fully implemented its natural resource management program. Elements include land use planning, land administration, fish and wildlife management (including the appointment of a conservation officer), environmental assessment promulgation of both Land Resource and Fish and Wildlife legislation and co-operative management arrangements with the Yukon Government.

Access Contacts

- Progress has been made in opening lines of communication between NND, the local DIAND Mining Recorder and various miners wishing to gain access to NND Settlement Lands. This has helped the players better understand each other's interests and respective obligations.

Property Tax Subsidy

- This program has worked well. Tax subsidy payments by Canada have been prompt. Yukon has identified, reconciled, valuated and setup assessment rolls for each First Nation. It has also identified specific areas of tax forgiveness, established taxable and tax-exempt status for specific parcels of Settlement Lands, developed a Home Ownership Grant (HOG) form for eligible Yukon First Nation properties, produced a tax roll specific to each Yukon First Nation and created a HOG list for each taxing authority. NND, the village of Mayo and Yukon have worked cooperatively to establish a property tax role and a review process for ensuring accurate updates of the role.

Yukon and First Nations Accords

- To facilitate practical and effective intergovernmental relations with Yukon First Nation governments, Yukon has entered into intergovernmental relations accords with VGFN, NND and TH. These accords provide a formal mechanism for Yukon and Yukon First Nation governments to work together on matters of concern and mutual interest. The protocol agreements call for the development of common priorities and work plans and for annual meetings of the principals to review progress and address outstanding issues. Although not a requirement of the Final Agreements, the accords are seen as a means of addressing bilateral Yukon-First Nations implementation issues of common concern.
- To assist in addressing obligations related to the Primary Use Area in the traditional territory of the NND, a communications protocol was signed by Yukon and the Gwich'in Tribal Council, which provides clear direction as to who should be contacted regarding implementation obligations related to the Yukon Transboundary Agreement in the Gwich'in comprehensive Land Claim Agreement.

Northern Tutchone Sharing Accord

- To establish a management regime for overlap areas, a sharing accord based on the First Nation traditional practice of sharing land and resources in such areas, was completed among LSCFN, SFN and NND.

Chapter 3

Issues and Recommendations

Pace of Implementation

In some instances the pace of implementation has been slower than the parties envisioned when they drafted the implementation plan activity sheets and annexes. The reasons are varied and complex. In some cases, the parties had initial difficulty in coming to grips with responsibilities, either because they did not fully understand their roles or were reluctant to change an earlier mode of doing business. In other cases, the parties disagreed on the nature of a responsibility with the result that time was required to work out differences. In some instances, the agreement and implementation plan projections were overly optimistic with regard to the capacity of the parties to respond, or the agreements simply did not anticipate the complexities or disagreements over how implementation should proceed. At times, obligations that were considered priorities during implementation planning negotiations were not accorded the same urgency once implementation began. Finally, as mentioned earlier, the longer time required to conclude Final Agreements with the remaining Yukon First Nations has also impeded implementation of certain obligations.

In the five years covered by this review, many of the initial problems have been worked through and are no longer issues. There are often extensive front-end costs in time, effort and resources required to put new processes in place. This needs to be considered by the parties when setting out their expectations in implementation plans. The IRWG believes that in Yukon, the experience gained by the parties working through many of the difficult issues in implementing the first four Final Agreements will make it much easier for them as future agreements come into effect or similar situations arise in the existing agreements.

Several areas in which concerns remain are the pace of the progress toward forestry and land use planning, the development of Development Assessment Process (DAP) legislation, and the development of a trappers compensation policy, all of which have been slow to unfold. The IRWG notes, however, that the parties have not been idle on these fronts and have initiatives under way to address all these issues. The IRWG sees this as a positive step, but recommends that these initiatives be closely monitored to ensure real progress is achieved.

Access to Status Lists

2.7.1 Notwithstanding any other provision of the Settlement Agreements, Government shall not be required to disclose any information that it is required or entitled to withhold under any Legislation relating to access to information or privacy. Where Government has a discretion to disclose any information, it shall take into account the objectives of the Settlement Agreements in exercising that discretion.

Issue

Disclosure of status membership lists.

Background

Self-governing Yukon First Nations require accurate information on status and non-status citizens in order to administer various programs. The *Privacy Act* has made it very difficult for them to get access to the status lists maintained by DIAND. Permission was obtained for access to the lists on a one-time basis several years ago but this clearly does not satisfy the ongoing requirement for information. Recently, responsibility for managing the status lists has been transferred to Yukon First Nations to administer on behalf of DIAND. Even so, because of privacy issues, the First Nation persons charged with the responsibility of maintaining the list cannot disclose information to their First Nation government.

Status

An initiative has been undertaken by the Fiscal Relations and Program Transfers Directorate in the DIAND Regional Office to resolve the issue. This office is working with an Access to Information and Privacy coordinator at DIAND Headquarters to develop agreements with self-governing Yukon First Nations to enable them to have access to information essential for First Nation governance. It is anticipated that, as a prerequisite for such agreements, Yukon First Nations will need to develop and pass their own Access to Information and Privacy Acts.

Recommendation

The IRWG recommends that Yukon First Nations, who have not already done so, begin the process of drafting and enacting Access to Information and Privacy legislation to ensure that they will be in a position to take advantage of any access agreements that might be developed.

Land Use Planning

11.4.1 Government and any affected Yukon First Nation may agree to establish a Regional Land Use Planning Commission to develop a regional land use plan.

Issue 1

Slow pace in initiation of regional land use planning.

Background

The Umbrella Final Agreement and Final Agreements introduced a new regime for the conduct of land use planning in the Yukon. This included the establishment of the Yukon Land Use Planning Council (YLUPC) and provision for the creation of Regional Land Use Planning Commissions (RLUPC). As a prerequisite to regional land use planning, a key role for the YLUPC is to make recommendations to the parties on planning regions, planning priorities, general terms of reference and planning region boundaries.

The YLUPC was established in 1995. Initially, progress was slow. For several years the Council worked largely in isolation as it asserted its arm's length relationship with Government. It was also hampered by the mid-term resignation of several members. Concerns as to the lack of progress expressed by the parties resulted in a re-orientation and the development of closer working relationships with both Governments and Yukon First Nation governments.

Recommendations on planning regions were made in the summer of 1998. Eight planning regions were proposed by YLUPC and three were identified as priorities: North Yukon, Northern Tutchone and Teslin-Carcross planning regions. Following these recommendations, the Council entered intensive discussions with Government and the interested Yukon First Nation governments to develop general terms of reference. Several difficult issues were encountered. Most time consuming was resolving issues around planning in areas where traditional territories overlap. Government also had concerns about proceeding with planning in regions where agreements had not yet been concluded (e.g. the Teslin-Carcross planning region as the Carcross/Tagish First Nation has not yet signed a final agreement).

By December of 1999, most of the major issues were resolved and since then progress has improved. Agreement was reached on the establishment of the North Yukon Regional Land Use Planning Commission. Members of the Commission were appointed in September 2000 and, by early October, the RLUPC had begun the initial work to address its mandate. The parties also agreed to proceed with the planning region in the TTC Traditional Territory, and the nomination process for that commission is under way. Work is also continuing toward establishing a RLUPC in Northern Tutchone planning regions as well. This planning region encompasses the NND, SFN and LSCFN Traditional Territories.

While pleased that progress is presently being made, the IRWG believes that some of the delays would have been avoided had the YLUPC, Government and Yukon First Nation governments worked more closely together from the outset. Not only could this have assisted the YLUPC to orient itself to its tasks sooner, but it also might have helped Canada, Yukon and the interested Yukon First Nation governments to identify and resolve key issues earlier in the

process. This said, the IRWG believes that since 1998, the YLUPC has made significant progress in engaging the parties and is encouraged by the more open and cooperative working relationships that have developed.

Recommendation

The IRWG strongly recommends that the YLUPC, Canada, Yukon and Yukon First Nation governments continue to work in close partnership to ensure that progress on regional land use planning is maintained.

Issue 2

Long-term arrangements and monitoring provisions.

Background

The Umbrella Final Agreement (UFA) Implementation Plan provided a commitment of up to $7.4 million dollars in 1992 dollars for regional land use planning in the Yukon. This plan is a 10-year agreement which will expire on February 13, 2005. Two concerns have been raised by the YLUPC and Yukon First Nation governments. The first is that it is likely impossible to address regional land use planning and complete land use plans in all eight planning regions before the current 10-year agreement expires. The second is that there are no provisions for ongoing monitoring or plan review in the current Implementation Plans, both of which are critical to the success of this Program.

Canada has noted, in response, that these matters should be addressed in conjunction with the re-negotiation of the implementation funding provisions that will be necessary before the expiry of the 10-year period. Appropriate adjustment to the funding period for development of the regional land use plans can be considered through that process. Any arrangements or ongoing monitoring and review of regional plans can also be considered at that time and incorporated into the Implementation Plans as appropriate.

Development Assessment Process

12.3.4 Government shall recommend to Parliament or the Legislative Assembly, as the case may be, the Development Assessment Legislation consistent with this chapter as soon as practicable and in any event no later than two years after the effective date of Settlement Legislation.

Issue

Impact of the delays in developing the Development Assessment Process (DAP) legislation.

Background

The original work plan of the parties as set out in the UFA Implementation Plan was drafted to meet the two-year time frame of the UFA. This work plan provided for drafting guidelines to be developed within two years concurrent with the drafting and introducing of legislation. This timetable could not be met, and the process is already several years beyond the deadline with more work required before legislation can be introduced. Some of the key factors for this long delay include the following.

1) There was an initial delay of more than a year and a half before the Council of Yukon First Nations was available to begin discussions. Once discussions began, time was taken up sorting out process and the issue of whether drafting guidelines were necessary.

2) Developing the legislation has been more complex than anyone expected. Numerous issues have arisen, many requiring the parties to return to their principals for further direction.

3) Harmonizing the *Canadian Environmental Assessment Act* and DAP was an internal problem for Canada which took more time than anticipated to resolve.

4) The initial public consultation phase resulted in over 50 interventions totalling several hundred pages of comments to review and analyse, which took months of work. The parties have agreed that further extensive public consultations will be required before the

legislation can be finalized. This public consultation has been, and continues to be, a significant factor in the time required to prepare legislation for introduction into Parliament. The IRWG believes that this is time worth taking, as the process is critical for ensuring that the interests of stakeholders and the general public are reflected in the final legislation.

Status

The DAP Working Group has resolved the major issues and will be conducting a further round of consultations with stakeholders. Following these consultations (which will require at least three months), analysis of comments received and any final revisions to the legislation will be required. This is expected to take place over the spring of 2001. The current projection is that the legislation should be ready for introduction to Parliament by the fall of 2001.

Interim Measures

The UFA provided for interim measures to address matters while the DAP was under development. At the outset of the DAP discussions, an interim measures table was established for mitigative measures. This table has seen only limited action, as the parties have preferred to focus most of their energy on developing and drafting the DAP legislation. One outcome of the interim measures table was the development of project management teams to carry out some of the large environmental review projects. This provided Yukon First Nations with a role in the *Canadian Environmental Assessment Act* review process similar to the role they will have in the DAP. As well, through funding provided by DIAND, Yukon First Nations have been able to hire band resources officers who, among other things, provide Yukon First Nations with a greater capacity to intervene in *Canadian Environmental Assessment Act* reviews.

Recommendation

The IRWG recommends that First Nation governments who have specific concerns about interim measures should contact their interim measures table representative.

Allocation of Heritage Resources

13.4.1 **As the Heritage Resources of Yukon Indian People are underdeveloped relative to non-Indian Heritage Resources, priority in the allocation of Government program resources available from time to time for Yukon Heritage Resources development and management shall, where practicable, be given to the development and management of Heritage Resources of Yukon Indian People, until an equitable distribution of program resources is achieved.**

13.4.2 **Once an equitable distribution of program resources is achieved, Heritage Resources of Yukon Indian People shall continue to be allocated an equitable portion of Government program resources allocated from time to time for Yukon Heritage Resources development and management.**

Issue

The steps contemplated in the Yukon First Nation Implementation Plans have not occured.

Background

The implementation plan activity sheets for the first four Yukon First Nations call for the parties to develop terms of reference jointly for a strategic plan to address the objectives in section 13.1.0 and matters in sections 13.4.1 and 13.4.2. In subsequent Implementation Plans, this activity was changed to provide for the individual First Nation and Government (Canada and Yukon) to develop terms of reference and a work plan for that First Nation.

Status

While there has been some general discussion by the parties on the issues, the strategic plan or plans in the Implementation Plans have yet to be developed. Recently, there has been renewed focus by the parties on this obligation. To achieve real progress, there must be a decision on whether this is an individual or a collective exercise. In the meantime, resources have been directed both by Canada and Yukon into First Nation heritage initiatives.

Recommendations

The IRWG recommends that the parties give priority to how to approach this obligation, individually or collectively, and to take immediate steps to harmonize the various Yukon First Nation Final Agreement Implementation Plans. It also recommends that the Yukon First Nations and the responsible government agencies meet to discuss the issue. Such a meeting could be coordinated by the IWG.

Site Specific Surveys

15.4.4.1 **Notwithstanding any subsequently discovered inaccuracies in the plotting of features or improvements from which the location of Proposed Site Specific Settlement Land was determined, for the purposes of 5.14.0, the actual location of the Proposed Site Specific Settlement Land shall be determined by its actual proximity or relationship to this feature or improvement.**

Issue

Survey and confirmation of certain Proposed Site-Specific Settlement Lands (PSSSL) which do not reference a feature or improvement.

Background

A PSSSL is a temporary reservation of land from which a site-specific land selection is to be demarcated by ground survey. Once the site-specific land selection has been surveyed and the plan registered, it replaces the proposed site-specific parcel and becomes Settlement Land. In the course of the Settlement Land survey program, a number of situations have been discovered in which the desired site-specific parcel (as located on the ground) does not fall within the PSSSL (as plotted on the Settlement Land maps in Appendix B of the Final Agreements). When features or improvements are included in First Nation Final Agreement Appendix A land descriptions (or Appendix B), section 15.4.4.1 allows the site-specific parcel to be established adjacent to the feature or location, notwithstanding the fact that it might be wholly or partially outside the proposed site-specific parcel.

If the descriptions or maps contain no references to features or improvements, there is no mechanism in the Final Agreements to relocate the site-specific parcel to an area outside the PSSSL.

Status

To resolve the problem, several different proposals have been considered and rejected over the last few years. Most recently, a new proposal has been developed by Canada. It was presented to the interested Yukon First Nations for their consideration in June 2000 and has been accepted. The next step is for the interested parties to sign a Memorandum of Understanding which will identify the problem PSSSLs and set out the steps for correcting the errors. The process will include an amendment to the Yukon First Nation Final Agreement Appendix B land descriptions once all the errors have been corrected.

Trapline Holders Compensation

16.11.13 **Yukon Indian People holding traplines whose Furbearer Harvesting opportunities will be diminished due to other resource development activities shall be compensated. Government shall establish a process following the Effective Date of the Yukon First Nation's Final Agreement for compensation, including designation of the Persons responsible for compensation.**

Issue

Progress with respect to development of a process.

Status

The initial work on this project began with the formation of a Trapline Holders Compensation Working group in early 1997. After several meetings of this group, it became apparent that the Trapline Holders Compensation was a complex issue that required further study before a process could be developed. To understand the scope of the issue better, DIAND, Northern Affairs Program engaged the

Canadian Institute of Resources Law to research the issues. Two papers resulted: one focussing on the context in Yukon, and the other reviewing other compensation regimes or processes. These documents, "Survey of Issues and Options for Compensation Regimes" and "Compensation for Water, Wildlife and Surface Rights in Yukon: Legal and Constitutional Issues" were completed in April 1999. Subsequently, these reports were summarized by the Canadian Institue of Resources Law and circulated to Yukon First Nations, RRCs, Yukon Water Board, Surface Rights Board and other stakeholders for their comments. An extensive round of preliminary consultations with these groups began in the spring of 2000. Input from these consultations will be summarized and shared with the participants, and the information used to assist in developing a process for compensation of trapline holders. To further advance the process, workshops are also being organized with several First Nations to share information with First Nation trappers.

Recommendation

The IRWG is pleased to see a focussed effort being made to address this obligation. The IRWG recommends that a time table incorporating target dates be developed to ensure timely completion of the process.

Forestry Issues

17.2.2 The Minister shall Consult with the affected Renewable Resources Councils:

17.2.2.1 prior to establishing a new policy likely to significantly affect Forest Resources Management, allocation or forestry practices; and

17.2.2.2 prior to recommending to Parliament or the Legislative Assembly, as the case may be, Legislation concerning Forest Resources in the Yukon.

Issue

Ongoing concerns voiced by Renewable Resources Councils (RRCs) and Yukon First Nations that government is not living up to its obligations to consult under these clauses.

Background

Forestry issues, especially those relating to timber allocation, permits, management planning and forest firefighting are matters of intense local interest in Yukon. The requirement for government to consult with RRCs was a measure introduced into the UFA to ensure local input to management of the resource. In both their written submissions and their oral presentations to the IRWG, the RRCs were highly critical of the consultation efforts by DIAND Yukon Region. They report that their single most difficult challenge has been to build a meaningful working relationship with the Forestry division. Their main complaint is that while Forestry has spent a lot of effort informing them of its decisions, the RRCs have not been given an opportunity to have meaningful input to those decisions.

Yukon Region notes that it has entered into a consultation protocol with the Alsek RRC to address the obligation to consult under section 17.2.2. This approach resulted in a significant improvement in relations and has resolved much of the friction over consultation between the two parties. The Region has offered to enter similar protocols with other RRCs.

Recommendation

The IRWG recommends that the RRCs and DIAND negotiate protocols for matters requiring consultation pursuant to clause 17.2.2.

17.5.3 After Consultation with Yukon First Nations, the Minister shall establish the order in which plans for Forest Resources Management are to be developed. The Minister shall Consult with Yukon First Nations prior to changing the order established.

Issue

Proposed steps set out in the Implementation Plan have not been implemented; order of plans not yet addressed.

Background

The Yukon First Nation Implementation Plans activity sheet provides for the Minister to notify Yukon First Nations of the intention to establish the order of Forest Resources Management Plans within one year of the effective date of the settlement legislation. There was also an assumption in the plans that all 14 Yukon First Nations would be invited to a joint meeting within a year of the effective date to consult on the order of the plans. This has not occurred.

As an alternative, Yukon Region developed a framework to facilitate forest resources management planning and to help the consultation process under 17.5.4.1. This framework has been shared with Yukon First Nations. In the meantime, as the result of pressing forestry issues and local community concerns, the forest resources management planning process has begun in Teslin and CAFN Traditional Territories. Some initial work has also been undertaken in the NND and VGFN Traditional Territories.

The IRWG notes that, notwithstanding these developments, the obligation to consult with Yukon First Nations before establishing the order of forest resource management plans has not been fulfilled. This has led to the conclusion by some Yukon First Nations that the process is being driven by the "squeaky wheel" approach and that this is unfair to Yukon First Nations who have not been in the forefront with their forestry concerns. They note that one purpose of the provison was to give all Yukon First Nation governments an opportunity to present their views on the importance of, and timing for, forest resources management planning for their traditional territories before any decisions were made or planning begun. The failure of Canada to meet the obligation under 17.5.3 is depriving them of that opportunity.

Recommendations

The IRWG recommends that DIAND Regional officials meet with the interested Yukon First Nations at the earliest opportunity to discuss how best to fulfill both the spirit and the intent of the obligations under this provision. The IRWG further recommends that the IWG organize and host such a meeting at the earliest mutually convenient time.

17.8.2 Government shall Consult with each Yukon First Nation on general priorities for fighting forest fires on that Yukon First Nation's Settlement Land and on adjacent Non-Settlement Land.

Issue

Yukon First Nations report that consultation is not taking place.

Background

DIAND Yukon Region reports that a fire zonation map review was carried out with all Yukon First Nations and Renewable Resources Councils in March 1999. Policy development and finalization of firefighting priorities were expected to occur during the winter of 1999-2000 in consultation with all Yukon First Nations and the Tetlit Gwich'in. This did not occur. Instead, the Region decided to apply last year's zonation model for the coming 1999-2000 fire season. Since the previous year was an abnormally active fire season, this will help to determine whether the existing model will hold in a "normal" year.

Yukon First Nations have noted that the zonation exercise does not fulfill the requirements for consultation on firefighting priorities. They expressed concern that policy development is taking place without consultation. Yukon Region has indicated that the policy review currently under way focusses on internal operating procedures and as such is not subject to consultation. The Region has reassured Yukon First Nations that it will consult fully on any policy that affects them. Yukon First Nations remain concerned that some of the policy DIAND considers internal may, in fact, affect their interests.

Recommendations

The IRWG recommends that DIAND Yukon Region and Yukon First Nation governments establish a protocol for consultation on forest firefighting priorities which sets out the nature and the extent of policy development to be consulted on. The IRWG further recommends that this issue be placed on the agenda for the meeting recommended with respect to 17.5.3 above.

Consultation Obligations

"Consult" or "Consultation" means to provide:

a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;

b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and

c) full and fair consideration by the party obliged to consult of any views presented.

Issue

Ongoing concerns have been expressed by Yukon First Nations that Government is not always living up to the "Consultation" requirements of the Yukon Final Agreements.

Background

As a matter of policy, governments consult with the general public, stakeholders, First Nations and special interest groups on a wide range of policy and program issues. Such consultations are carried out in a variety of ways depending on the subject matter and the target audience. Among other things, consultation initiatives may include public meetings, workshops or information sessions, community visits, face-to-face meetings organized for specific audiences, circulation of discussion papers or draft proposals to interested groups inviting comment, invitations advertised in newspapers or media for input on proposals.

In addition to consultations that are carried out as a matter of policy, there are also requirements that are established as legal obligations through legistation or regulations. Such requirements are established in the Yukon First Nation Final and Self-Government Agreements.

There are a number of clauses in the Yukon First Nation Final Agreements which require government to "Consult" with Yukon First Nation governments, boards or the CYFN. There are also clauses requiring Yukon First Nation governments to "Consult" with Government or boards. Consultations carried out pursuant to these specific clauses must meet the test of "Consult" or "Consultation" quoted above.

IRWG First Nation representatives have expressed concerns that Government does not always meet the large "C" consultation requirements of the Final Agreements. The main concerns they have brought forward include:

- inappropriate process being followed, (i.e., contacting the wrong people in the First Nation or attempting to consult through informal contacts);
- inappropriate reliance on public consultation initiatives, which do not meet the "Consultation" test, to address Final Agreement consultation obligations;
- not enough information being provided to permit informed decisions; and
- unrealistic time frames (i.e., not enough time for a First Nation governments to carry out internal deliberations, particularly if the matter is of such a nature that it must be considered at a general assembly).

Gun laws, Coast Guard regulations and changes to the *Yukon Heritage Resources Act* were cited as examples of areas where Yukon First Nations believe there was no proper consultation on legislative changes. They have also been highly critical of the consultation process followed by Yukon in development of its Protected Area Strategy.

As mentioned elsewhere, RRCs have identified forestry consultation as a major concern. The Yukon Fish and Wildlife Management Board has also reported that it is frequently presented with amendments to legislation or

new legislation which is being developed by Canada only after the bill has been introduced to Parliament and is at the second reading stage. It believes that this does not allow for any meaningful input.

Canada and Yukon noted that concerns were also being heard on the Government side. Government departments indicate that they are spending an enormous amount of their time, effort and resources on consultation. Their main complaint is that Yukon First Nation governments frequently do not respond to these efforts. Several departments also report that they go well beyond the provisions of the agreements to consult on issues. An example would be the consultations that are planned in connection with development of a trapline holders compensation process. There are no requirements for such consultations in the Umbrella Final Agreement.

It was also noted by the Yukon representative on the IRWG, that to address the issue of consultation, Yukon developed a corporate policy and a framework for Yukon First Nation relations in 1995. This includes consultation guidelines to assist Yukon departments in carrying out consultations with Yukon First Nation governments. These guidelines were revised in 1997.

Recommendation

Given the controversy that the "large C" consultation requirements of the Final Agreements continue to generate, the IRWG recommends and encourages the development of consultation protocols between the parties. These protocols should be constructed at the appropriate working levels to ensure that they can be implemented. They should also aim to involve Yukon First Nation governments at an early stage in the policy development process.

Chapter 4

Implementation Plan Funding

Under the provisions of the UFA and Final Agreement Implementation Plans, the parties agreed on the level of funding to implement the agreements. This included funding to assist Yukon First Nations and the Council of Yukon First Nations (CYFN) with their obligations as well as for the operation of each board established by the Agreements. Also provided under the UFA Implementation Plan was $1.5 million for the Yukon River Harvest Study; $7.4 million for the development of regional land use plans; $6.5 million for the Yukon Indian People Training Trust; $3.3 million for the Yukon Fish and Wildlife Enhancement Trust; and $4 million for the First Nation Implementation Fund administered by the CYFN (all in 1992$). This last fund is intended to support Yukon First Nations in establishing the entities required for implementation of their responsibilities and to assist Yukon First Nation governments and Yukon Indian People in taking advantage of opportunities, including economic ones arising from the agreements. To date, the only use of the fund has been to provide loans to several Yukon First Nations to purchase the Yukon Inn in Whitehorse. These loans are being repaid, and the CYFN is now taking steps to establish the fund as a trust.

The review of funding adequacy provided for in the Implementation Plans is focussed mainly on two areas: First Nation implementation funding and board funding (especially Renewable Resources Council (RRC) funding). Adequacy of board funding is addressed in Chapter 5 of this report which also contains status reports on the Training Trust Fund and the Yukon Fish and Wildlife Enhancements Trust.

Adequacy of First Nation Funding

Adequacy of First Nation Final Agreement implementation funding was a particularly challenging area to address. Implementation funding provided to Yukon First Nations was negotiated based on a "global offer" made by Canada in 1993. As a result, there were no pre-determined evaluation criteria to assess the adequacy of the funding that was provided, nor was there any common understanding among the parties as to what costs to include and to what extent, if any, Yukon First Nations should be responsible for their own implementation costs. To further complicate the analysis, there was the issue of overlaps between self-government funded implementation activities, Program and Services Transfer Agreement (PSTA) funded activities and final agreement implementation activities. Finally, funding adequacy was also raised by Yukon First Nations at the negotiating table on the renewal of the Self-Government Funding Transfer Agreements (FTAs).

Since there was no base on which to begin, the IRWG agreed that there should be an initial costing exercise carried out "without prejudice" to determine if it was possible to agree on a base level of resources necessary for each Yukon First Nation to carry out its land claim agreement obligations. It was also agreed that determining a reasonable level of assistance by Canada to support this effort would be a separate exercise from the five year review.

The IRWG agreed to the following methodology: identify the activity clauses, group these clauses into logical activity areas or functions, determine the level of effort required to carry out the ongoing activities or functions expressed in Full Time Equivalent (FTE) positions and, finally, translate these FTE requirements into dollars.

The First Nation of Nacho Nyak Dun (NND) undertook to carry out the initial analysis on behalf of Yukon First Nations. The methodology was tested in the late winter 1998 and a more comprehensive proposal was completed by NND in February 1999.

In the meantime, in response to earlier Yukon First Nation requests that all funding issues be dealt with at a common table, Canada proposed an integrated approach to these issues. The Yukon First Nations agreed and the issue of funding adequacy was transferred to the PSTA negotiation table, where the NND report was tabled. Canada reviewed the report, which provided useful information to assist its own analysis and develop an offer acceptable to Yukon First Nations.

In November 1999, Canada and all seven Yukon First Nations with Final Agreements reached an accord. It concluded the transfer of Northern Affairs Program's services and funding, and completed the five-year adequacy review of First Nation implementation funding. It also provided for all further adequacy reviews required under the First Nation implementation plans to be coordinated to take place in 2004-2005. This will satisfy the nine-year review required under the first four Final Agreements and the five-year and nine-year reviews, required under all subsequent First Nation Final Agreements of those Yukon First Nations that accept the Northern Affairs PSTA offer.

Incremental funding provided to each Yukon First Nation under this agreement included annual ongoing funding of $292,859, a $100,000 one-time payment, and the negotiation of a five year fire-suppression contract with each Yukon First Nation ($100,000 annually).

Adequacy of Council of Yukon First Nations Funding

Canada provided CYFN with $350,000 (1992$) for the initial year of implementation following the effective date. Thereafter, Canada has provided CYFN with an annual grant of $150,000 (1992$) for their ongoing implementation responsibilities under the UFA. In addition, CYFN received one-time funding of $400,000 for implementation projects, and $400,000 to develop an information strategy. It also received $500,000 as an implementation planning fund for the development of implementation plans and $4,000,000 for the establishment of a Yukon First Nation Implementation Fund.

CYFN finds its funding (currently $168,000 annually) is insufficient for it to adequately meet its on-going implementation responsibilities. CYFN is in the process of preparing a position paper to illustrate their funding shortfalls and will present it to the Implementation Working Group when completed. The IRWG recommends that the Implementation Working Group review this position paper once it has been presented by CYFN and inform the parties of its findings.

Chapter 5

Boards, Councils, Commissions and Committees

The Umbrella Final Agreement (UFA) established eight bodies with territory-wide responsibilities. These include the Fish and Wildlife Management Board (FWMB), Surface Rights Board (SRB), the Yukon Land Use Planning Council (YLUPC), the Salmon Sub-Committee (SSC), the Geographic Place Names Board (GPNB), the Heritage Resources Board (YHRB), the Dispute Resolution Board (DRB), and the Enrollment Commission (EC). It also provided a for Training Policy Committee (TPC) and for the Council of Yukon First Nations (CYFN) to nominate members to the Yukon Water Board (YWB) which was already in existence, and for the Yukon Development Assessment Board (YDAB), which has yet to be created under legislation. In addition, each Final Agreement provided for local Renewable Resources Councils (RRCs), Regional Land Use Planning Commissions (RLUPCs), Enrollment Committees, and Settlement Land Committees (SLCs). Finally, the CAFN Final Agreement established the Kluane National Park Management Board (KNPMB).

In most cases, the CYFN or Yukon First Nations and Government provide an equal number of nominees, and the government of jurisdiction then appoints the members of the various bodies. With the exception of the TPC, members, however, are not delegates of the party that nominates or appoints them, but rather representatives of the public interest.

Most of these bodies made written submissions to the IRWG outlining their experience with implementation to date. In addition, nine bodies boards, (the four RRCs, and the FWMB, YLUPC, GPNB, YHRB and TPC), outlined their implementation concerns on October 19, 1999 in presentations to the IRWG. The IRWG also heard a presentation from the Salmon Sub-Committee on June 16, 2000.

Overall, these bodies have taken up the challenges of implementing their mandates very well. What follows are some highlights from the first five years of implementation:

Dispute Resolution Board

The Dispute Resolution Board (DRB) administers a process to resolve disputes arising from the interpretation, administration or implementation of settlement agreements or settlement legislation. Its purpose is to provide the parties in dispute with a less adversarial, more informal and cost effective alternative to court action.

The Board's mandate is to mediate specific matters from the Final or Self-Government Agreements that have been specifically referred to it, as well as any other matters that all parties agree require Board resolution.

The Board consists of three members jointly selected and appointed by the CYFN, Canada and Yukon.

Over its first five years, the Board had several disruptions in its membership due to mid-term resignations, as well as a 10-month hiatus while the parties deliberated on nominations for the Board's second term. In its first term, the Board prepared draft rules of procedure and responded to one request for mediation, which was later withdrawn when the parties resolved the matter before the scheduled mediation session.

Enrollment Commission

The Enrollment Commission (EC) was established under the provisions of the Umbrella Final Agreement-in-Principle on July 1, 1989. Settlement legislation gives the Commission the power to determine eligibility for enrollment, to hear and adjudicate any appeal respecting enrollment and to provide for the enforcement of any order or decision. The Commission is an independent body operating at arm's length from the parties to the settlement agreements. It will operate until its dissolution pursuant to UFA section 3.10.4, which states that the Commission operate for 10 years

from the settlement legislation effective date of February 14, 1995, or for two years after the last First Nation Final Agreement is signed, whichever occurs first. At dissolution, the Enrollment Commission will turn over all documents and records to the Dispute Resolution Board.

The membership comprises of three commissioners and their alternates. One commissioner and an alternate are nominated by the Council of Yukon First Nations, one commissioner and alternate are jointly nominated by the federal and territorial governments, and the third commissioner and alternate are chosen by the two other nominees. Appointments are made by the Minister of Indian Affairs and Northern Development.

The EC has established working relationships with Yukon First Nations, various First Nations outside Yukon, and federal and territorial government agencies. The Yukon's Family and Children's Services and the EC work together to enroll Yukon First Nation descendants whose adoptions occur within Yukon. Family and Children's Services also works with adoption agencies outside of Yukon to ensure that Yukon First Nation descendants whose adoptions occurred outside Yukon are enrolled. Enrollment applications and information packages have been mailed to adoption agencies across Canada and Alaska, as well as to various Canadian Friendship centres. Advertisements regarding enrollment in the various Yukon land claims have appeared in major newspapers across Canada. As of March 31, 1999, a total of 8,287 beneficiaries has been enrolled among the 14 Yukon First Nations.

Yukon Fish and Wildlife Management Board

The Yukon Fish and Wildlife Management Board (FWMB) is the primary instrument for the management of fish and wildlife in the Yukon. It is mandated to make recommendations on all issues related to fish and wildlife management legislation, research, policies and programs in the Yukon. The Yukon Minister of Renewable Resources appoints the Board of 12 members, consisting of six recommended by the Council of Yukon First Nations and six by the Government of Yukon. Yukon consults with Canada on one of its nominations.

During the first five years of implementation, the FWMB has performed well. It has become involved in a wide range of issues including major work on habitat protection, access management, catch and release, and harvest monitoring. It has also been active in recommending new regulation proposals for fish and wildlife management in coordination with Renewable Resources Councils, the Department of Renewable Resources and the public. It has also developed strong ties with Renewable Resources Councils to coordinate input and recommendations concerning local and territory-wide management issues.

The Board holds regular meetings to keep informed of issues and to discuss specific concerns. To keep Government and the general public informed of its activities, the Board publishes a comprehensive annual report.

Fish and Wildlife Enhancement Trust

Members of the FWMB also serve as trustees to the Fish and Wildlife Enhancement Trust. The parties developed an Indenture Agreement to guide the trustees in their fiduciary operational duties of the Trust.

The Trust aims to restore, enhance and protect fish and wildlife populations and their habitat in the Yukon. It has been registered as a charitable organization to grant receipts to persons making gifts to the Trust.

After establishing its capital base for the first three years of its existence, the Trust funded its first projects in the 1998-1999 fiscal year with a total of $112,540. Projects undertaken included research on moose habitat, Teslin lake trout, Alsek River salmon, the Stewart River watershed and goose platforms.

As of March 31, 1999, the Trust's capital stood at $3.7 million.

Yukon Geographical Place Names Board

The Yukon Geographical Place Names Board (GPNB), was established in 1995 under the provisions of the Umbrella Final Agreement (UFA). Its mandate is to recommend naming and renaming of places or features located within Yukon. There are six members on the Board, three nominated by Yukon and three nominated by the Council of Yukon First Nations. The Yukon Minister of Tourism appoints all Board members.

After some initial organizational delays, the Board set up its offices, developed its internal administrative procedures and began the task of reviewing place name applications, including a backlog from the pre-UFA Board.

In the first five years, the Board has reviewed 113 place names, and made 139 recommendations to the Yukon Minister of Tourism but continues to have a backlog of some 110 applications.

The process of reviewing place names can be very complicated. To assist with the process, the Board has recommended to the Yukon Minister of Tourism that a full-time toponymist and toponymist trainee position be established. It has also recommended to the Minister of Tourism that highway signs be erected for recently approved place names.

Yukon Heritage Resources Board

The Yukon Heritage Resources Board (YHRB), established in March 1995 in accordance with the UFA, makes recommendations and provides advice to federal, Yukon and Yukon First Nation governments concerning the management of Yukon's heritage resources. It focuses mainly on movable heritage resources (objects) and sites. The YHRB also considers ways to use and preserve Aboriginal languages and the traditional knowledge of Yukon First Nation Elders.

The YHRB has 10 members, with equal numbers nominated by the Council of Yukon First Nations and Yukon. The Yukon Minister of Tourism appoints the nominees to the Board. One of the members appointed by Yukon must be acceptable to the Government of Canada.

Some highlights of the Board's first five years include recommendations on the proposed Yukon heritage legislation (all of which were adopted) and recommendations on how best to promote and preserve heritage, focussing on taxation as it applies to heritage resources. The Board has also begun work on preserving Aboriginal languages including guidelines on how to evaluate First Nation heritage management plans in the context of the territorial economy. The Board recommended the creation of a "Legacy of '98" Aboriginal language strategic planning roundtable, as outlined in its language report to government, "What are We Gonna Do". The YHRB is also establishing guidelines to designate territorially significant heritage sites and developing comprehensive operating procedures and guidelines for the Board's operations.

In 1999, the Board began planning a heritage conference designed to bring together Yukoners to gather information about regional and specific heritage issues and priorities. The Conference entitled Adäka (Southern Tutchone word meaning "Coming into the Light") was held in October 1999, and the results will be used to develop YHRB policies and make recommendations to Governments.

Yukon Land Use Planning Council

The Land Use Planning Council (YLUPC), established on February 14, 1995, has three members, one each nominated by the Council of Yukon First Nations, Canada and Yukon. The Minister of Indian Affairs and Northern Development appoints the nominees to the Council.

The Council's mandate is to make recommendations to Government and each affected First Nation on land use planning, including internal policies, goals and priorities; the identification of planning regions and priorities to prepare regional land use plans; terms of reference for each Regional Land Use Planning Commission (RLUPC) responsible for developing regional land use plans; and the boundaries of a planning region.

Currently, the YLUPC has a staff comprised of an office administrator, a Yukon First Nations planner and a planning director. A position for a geographical information system (GIS) research technician has also been identified but not filled.

As reported earlier, the Council was initially slow to address its mandate. However, in 1998 it began to produce results. Recommendations on planning regions were made in the summer of 1998, priority planning regions were identified and several initiatives were undertaken by the YLUPC in its efforts to establish RLUPC's for these priority areas. To facilitate discussions by the parties on general terms of reference as well as to provide a forum to address planning issues, the YLUPC organized area-specific working groups comprising of the YLUPC, Government and interested First Nation representatives. The YLUPC also drafted a response protocol setting out general parameters to address concerns over timely responses to its recommendations.

Over its first five years, the Council also organized a number of meetings and workshops to inform the public about land use planning in the Yukon.

As noted earlier in this report, nominations are currently under way for the Northern Yukon Regional Land Use Planning Commission.

Renewable Resources Councils

The Renewable Resources Councils (RRCs), established in each First Nation's traditional territory under each First Nation Final Agreement, are the primary instruments for local renewable resource management. Subject to transboundary agreements and Yukon First Nation Final Agreements, each Council comprises three nominees of the Yukon First Nation and three nominees of the Yukon Minister of Renewable Resources, who also appoints a chairperson selected by the Council. The Teslin RRC is comprised of 5 nominees of the TTC and 5 of the Minister.

These RRCs have become vital and indispensable community conduits and guardians for local wildlife management issues. They have increased local input into management decisions and have provided the "one window approach" for Government and third parties to raise issues that impact wildlife management.

Some highlights of the individual RRCs follow:

North Yukon Renewable Resources Council

- Is very involved with protected area planning, especially with the Fishing Branch; the Council's next priority is the Northeast protected areas.
- Is involved with the Vuntut National Park.
- Is involved with the management plan for the Fishing Branch Ecological Reserve; the Council will also work on the Old Crow Flats area.
- Is involved with land use applications.
- Has performed research projects (not directly evolving from land claims); these projects are beneficial to renewable resource management decisions, so Council input is worthwhile despite the cost and some downtime for the RRC.

Mayo District Renewable Resources Council

- Has done significant fund raising, more than $110,000 over three years.
- Has developed and sustained high-quality and close relationships with the NND Lands and Resources Department, the Fish and Wildlife Management Board, other Yukon RRCs, the Tetlit Gwich'in RRC, and the Yukon Department of Renewable Resources.
- Has developed new relationships with the Department of Fisheries and Oceans, DIAND's Forest Resources, the Yukon Placer Committee, DIAND's Land Resources and the Yukon Water Board.
- Is a full participant in the Bonnet Plume Heritage River Management Plan project.

- Has been a significant player in the assessment of large-scale projects such as new millennium's Dublin Gulch Level 2 review and United Keno Hill Mines Level 2 review.
- Participates by agreement with the Yukon government and outfitters in negotiating harvest quotas on caribou, moose and grizzly; it also observes the harvest of sheep; has signed quota agreements with three of four outfitters in the traditional territory and progressed through the appeal process with the fourth.
- Promotes the RRC through such activities as writing regular newsletters, monthly reports in the Stewart Valley Voice and an Annual Report; promotional activities such as hats, pins, cups, pens and knives, community surveys, open houses and public meetings.

Alsek Renewable Resources Council

- Coordinated and funded the Alsek Moose Management Plan, for moose in Game Management Zone 7, in partnership with Yukon, British Columbia (BC) Parks, BC Environment, Kluane National Park and CAFN; also recommended a winter harvest of moose in Zone 7 (the first of its kind in the Yukon).
- Participated as a full partner in development of the Aishihik Integrated Wildlife Management Plan and the Bison Management Plan.
- Participated in coordinating the first regional bear management planning process in the Yukon with the Kluane National Park Management Board; partners in this work include Kluane National Park, Yukon, CAFN, BC Parks and BC Environment.
- In partnership with Yukon Renewable Resources, negotiated quotas with the three outfitters within the CAFN Traditional Territory.
- Developed a consultation protocol with DIAND regarding forest resources management and related issues within the CAFN Traditional Territory; this protocol is being used as a template by other RRCs in developing working relationships with DIAND.
- Initiated and is coordinating the Yukon's first forest management plan; secured funding from DIAND to pursue this work and recommended to DIAND that the annual timber harvest for the region not exceed 20,000 cubic metres until the management plan is in place.
- Coordinated a wood/fuel modification project in Silver City, that included acquisition of photo mosaics of the traditional territory; these photo mosaics have already proven useful in a number of other projects including fire suppression modelling and a "Fire Smart" initiative for the Traditional Territory.
- Coordinated meetings which led to the formation of the Kluane Land Use Plan Working Group and referred revisions to the plan by the Working Group to the Yukon Minister of Renewable Resources for approval.
- Developed "Trapline Assignment and Reassignment Criteria" to guide the allocation of traplines within CAFN Traditional Territory.
- Has developed an excellent working relationship and strong partnership with CAFN's Department of Lands and Resources.
- Recommended to the Yukon Minister of Renewable Resources that the department develop a policy to govern fish-stocking proposals in the territory.
- Has initiated a management planning process and secured funding for this work in response to the local concern about lake trout populations in Dezadeash Lake.
- Involved the residents of CAFN Traditional Territory in all community decision making through an open door policy, public meetings, info sessions, surveys and newsletters.
- Worked to develop operating procedures and policies that are acceptable to government on administrative operations and initiated a process to make these rules clearer and fairer to all RRCs.

Teslin Renewable Resources Council

- Nisultin River Delta Plan Working Group is working on a monitoring basis.
- Has signed MOU regarding Fish and Wildlife plan; plan is within 12 months of completion; has harmonious relationship with outside resources.
- Has settled outfitter quotas and trapline allocation guidelines.
- Held successful information sessions in the community with the involvement of government and other agencies, in moving toward a single community voice.

Yukon Salmon Sub-Committee

The Yukon Salmon Sub-Committee, which has informally adopted the name Yukon Salmon Committee (YSC), is the primary instrument of salmon management in Yukon. The YSC consists of two members assigned from the Fish and Wildlife Management Board and two nominated by the Minister of Fisheries and Oceans. In addition, the affected First Nation for each of the Yukon, Alsek and Porcupine rivers drainage basins nominates two members to the YSC for matters concerning their respective drainage basins. The Minister of Fisheries and Oceans (DFO) appoints the members of the Committee.

The YSC mandate is to make recommendations to the Minister of Fisheries and Oceans and to Yukon First Nations on all matters relating to salmon including habitat, management, legislation, research, policies and programs. The creation of the YSC in 1995 has resulted in a complete change in the way the DFO conducts its business in the Yukon. All issues with respect to salmon management are vetted through the YSC.

During its first five years, the Committee has been very active in all aspects of Yukon salmon management. It played a key role in ensuring a smooth start-up to the six-year harvest study of the Yukon River drainage area and continues to monitor the results with increasing interest. This is a major study intended to determine the extent to which the Aboriginal fishery meets the needs of each Yukon First Nation. To gain a more thorough understanding of these basic needs, a historical record is being compiled which documents traditional fishing sites, methods and levels of effort.

The YSC has kept a close watch on the salmon fishery, in consultation with federal fisheries managers and has made recommendations for the timing and extent of fisheries closures for conservation purposes. The Committee has also begun implementation of a salmon conservation catch card, which will be used to assess the annual harvest of the salmon sport fishery and will contribute to the conservation and management of recreational salmon stocks.

In its presentation to the IRWG, the YSC noted that the provisions of the UFA, which require that a senior official of DFO shall serve as its Executive Secretary, are creating concerns with outside bodies about the public perception of its independent status from DFO. The Committee cites one instance where it was refused entry into a meeting because of the presence of the DFO official. Although practically speaking, there have not been any problems, the Committee also feels that the direct administration of YSC funding by DFO contributes to the perception that the Committee is not truly free to make decisions and recommendations independently. The operational guidelines in the Umbrella Final Agreement Implementation Plan recommend that the Committee prepare an annual budget for submission to the Fish and Wildlife Management Board which respects the Salmon Sub-Committee's discretion over the allocation of its funds. The Committee would like to gain direct control of its funding identified in the UFA Implementation Plan, subject to reasonable accountability.

Members of the YSC who appeared before the IRWG noted that they are working with DFO in an attempt to overcome these matters, but would like the parties to be aware that these concerns exist. The IRWG recommends that the IWG monitor the situation.

Settlement Land Committees

Under the UFA, each First Nation Final Agreement establishes a Settlement Land Committee to make recommendations for surveying Settlement Lands, including site-specific selections, survey priorities and special management area boundaries. Each committee consists of two members appointed by Government and two appointed by the Yukon First Nation. The Surveyor General appoints a representative to chair the committee. These committees have all functioned well in carrying out their responsibilities under the land claim agreements.

Yukon Surface Rights Board

The Yukon Surface Rights Board (SRB) was established in 1995 as a quasi-judicial tribunal under chapter 8 of the UFA. The Board hears disputes primarily between surface and sub-surface rights holders as well as other related matters in Yukon.

Chapter 8 of the UFA allows for up to 10 members on the Board, half of whom are nominated by the Council of Yukon First Nations and half by the federal government. The chair of the Board is appointed by the Minister of Indian Affairs and Northern Development on the recommendation of Board members. The SRB is presently composed of four members and a chair.

During its first five years of operation, numerous inquiries were made but none resulted in a hearing before the Board. All active files were concluded in consultation with the applicants. Training has been a priority for the Board, particularly in the areas of administrative law and dispute resolution. Board members are provided access to a variety of courses in both areas.

The Board also assists with the ongoing development for training tribunals in the Yukon. The executive director for the Board sits as the Yukon member on the Canadian Council for Administrative Tribunals.

The SRB has also been active in informing Yukon First Nation lands and resources departments about surface rights legislation and procedures on Settlement Lands within their traditional territories. It attends the annual Geoscience Forum in Whitehorse to provide information to the mining industry and has designed a web site as another means of making information available to the public. The site includes past applications, relevant legislation, application forms and procedures, Board-member information and other matters about the Board.

In 1999, the Board completed initial revisions of its rules of procedure. Further revisions will be made before public comment is requested.

Training Policy Committee

The Training Policy Committee (TPC) consists of five representatives: one representative nominated by Canada, one by Yukon and three by the CYFN. Each nominating party appoints its own nominees. Unlike other boards, TPC members are representatives of the party that appoints them. The mandate of the TPC is set out under chapter 28 of the UFA. Its principal responsibilities are to establish training programs for Yukon Indian People; to develop a training plan which addresses matters in the Implementation Plans and to establish consultative arrangements between Government and Yukon First Nations to ensure effective and economical integration of existing and new programs. Members of the TPC also act as trustees of the Yukon Indian People Training Trust and are responsible for the management of this fund.

Over its first five years, the TPC has assisted a number of Yukon First Nations to develop training plans, and has assessed these plans and identified possible generic training. It also participated in a wide range of meetings and discussions on various employment and training initiatives in the Yukon. The TPC has also played a lead role in organizing training sessions for UFA and Final Agreement boards.

To assist it in its work, the TPC has developed internal operational guidelines and a personnel policy as well as operational guidelines and an investment policy for the Training Trust.

Training Trust

Since 1995, the allocations from the Training Trust to Yukon First Nations have totalled approximately $2,000,000. The goal of the trustees in managing the Trust is to maintain the fund in perpetuity. The proposal therefore is to limit future spending to the interest that is earned on investment of the fund. At the end of the 1998-1999 fiscal year, the Trust's value stood at $6,996,377.

Yukon Water Board

The Yukon Water Board (YWB) was already in existence at the effective date of the UFA. The Board is responsible for the development, conservation and utilization of waters in Yukon. The UFA sets out several provisions with respect to water management in Yukon. It also provides for Yukon First Nations to nominate on a third of the members of the Board (the remaining members are nominated by Canada). Appointments are made by the Minister of Indian Affairs and Northern Development.

The Board regularly holds orientation meetings for new members. It also provides new board members nominated by the CYFN with the opportunity to attend workshops and seminars on administrative law and to tour project sites where there is a potential impact on water flowing on or through Settlement Land.

The Board has been active in seeking legal opinions regarding the interpretation of specific requirements under Chapter 14 of the UFA. Recently the Board has reviewed and revised its rules and procedures.

Other Board Issues

Several issues identified during the course of the five-year review were of common concern to many of the boards including:

Training

Board Familiarization: To meet the provisions of chapter 28.3.7 of the Umbrella Final Agreement, Annex B of the Umbrella Final Agreement and Yukon First Nation Final Agreement Implementation Plans proposed that within 90 days of effective date the parties jointly inform each board about relevant provisions of the agreements. These sessions should be repeated as often as necessary or upon expiry of the initial board appointments.

The IRWG notes that, overall, 90 days from effective date was not a practical time frame. In several instances, the initial familiarization sessions had not yet taken place, nor have there yet been any follow-up sessions as proposed in the Implementation Plans. Several boards have indicated an interest in follow-up sessions.

Recommendation: The IRWG recommends that the parties ensure that familiarization sessions be held with those boards that have not yet received them as soon as possible, and that follow-up session be offered and provided to all boards that would like them.

Other Board Training: With the exception of the familiarization sessions sponsored by the parties, under the provisions of the UFA (article 2.12.2.9) and the UFA and Final Agreement Implementation Plans (Annex B, Part 2), the onus is on the boards to address their requirements, including budget provisions, to provide training related to board procedures and function, mandate, cross-cultural orientation and education. To assist the boards in their training endeavours, it was proposed in Annex B of the UFA Implementation Plan that the Training Policy Committee develop the design and delivery of such training "as the Board may desire or request" and also choose facilitators for the training programs.

The IRWG notes that these latter arrangements have been slow to develop. The boards have carried out individual training and did get together for a training workshop in November 1997 to share experiences, discuss issues of mutual concern and consider the possibilities for greater cooperation and coordination in training and administration. Overall, the participants agreed that the session was very useful and that further sessions should be arranged. In March 2000, the Training Policy Committee sponsored a two-day meeting of boards to discuss common training issues. At this meeting, the Training Policy Committee agreed to take the lead to develop a model for board and committee training. A steering committee will guide the development of the training modules to ensure common concerns are addressed.

Nomination/Appointment/ Replacement of Members

The Yukon Fish and Wildlife Management Board, Yukon Salmon Sub-Committee and Renewable Resources Council members are appointed for five years. Appointments to these boards are staggered over three years. For the rest of the boards, appointments are for three years and there are no provisions in the Agreements for staggering. In all cases, any replacement of a member whose term has not expired is only for that unexpired portion of that term.

One issue that arises frequently out of these arrangements is the delay in replacing members who resign or in re-appointing members on expiry of their term. Although boards are mandated to operate with those members that are appointed, delays in appointing replacements can be disruptive. When a term has expired and an entire board must be re-appointed or replaced, any delay in the reappointment or replacement process causes stress for those members awaiting re-appointment and disrupts the operations of the board. Delays in nominating, approving and appointing replacements to the Dispute Resolution Board caused that Board to stop functioning for a number of months. The Yukon Heritage Resources Board Chairman noted in his presentation to the IRWG that the replacement of nearly all of its members upon expiry of their first term, was disruptive to the work of the Board in that the whole Board had to be re-oriented and its purpose and mandate re-established, all of which took a considerable amount of time. He suggested staggering of YHRB appointments to avoid such situations.

The IRWG has noted that it would require an amendment to the UFA to allow the staggering of YHRB appointments, something which is beyond its mandate to recommend. It notes however, that the parties have increased their coordinating efforts to ensure appointments are made within the appropriate time frame.

Adequacy of Funding

Adequacy of Board Funding

Annual funding for UFA boards is set out in Schedule I, Parts 1 to 4, of the Umbrella Final Agreement Implementation Plan. Funding for RRCs is set out in each Final Agreement Implementation Plan. All these amounts are adjusted annually for inflation. The IRWG reviewed the annual expenditures of these boards and compared them to the allocated funding. Boards were also given the opportunity to comment on the adequacy of their funding in written and oral presentations. Over the first five years, funding for the UFA boards has, on the whole, been adequate. In most cases, boards started off slowly and so, in the first several years, did not use their full allocations. It must also be noted that only seven of 14 Yukon First Nation Final Agreements are currently in effect. To what extent, if any, workloads of UFA boards will be increased and budgets affected once all 14 Yukon First Nation Final Agreements are effective remains to be seen. In this regard, several UFA boards have for several years now been spending very close to their annual allocation (i.e. the YSC and FWMB). These two boards in particular have raised concerns about the adequacy of their allocations to meet future demands.

Adequacy of TPC Funding

The Training Policy Committee (TPC) is an exception among the Umbrella Final Agreement bodies. It receives $82,000 per annum (1999 dollars) for its administration. The expenses of the members are the responsibility of the appointing parties. The TPC has advised the IRWG that this funding is inadequate to retain the qualified full-time staff it feels it requires to meet its mandate.

TPC operations are funded by the Council of Yukon First Nations through an annual grant provided by Canada. The 1998-1999 audit report of the TPC showed that it had surplus funds in the amount of $133,497 as of March 31, 1999. The TPC has reported that it never received the one-time $100,000 grant payment that was provided to the CYFN pursuant to the UFA Implementation Plan on the effective date, Febuary 14, 1995. It also reported that its budget is used to pay the honoraria and travel costs of the the CYFNs appointed members, even though the UFA provides under section 28.8.5 that each party pay its own costs for participation in the Committee.

The TPC has been successful in assisting Yukon First Nations to develop training plans. The IRWG notes that there appears to have been little progress with respect to other major tasks set for the TPC in its implementation work plan (e.g., establishing training programs or consultative arrangements to ensure coordination of existing and new training plans).

Recommendations: The IRWG recommends that the parties review the mandate and work plan of the TPC in consultation with the TPC in order to determine a realistic work plan and to resolve the issues around the funding for this body.

Adequacy of Renewable Resources Council Funding

Funding for the Renewable Resources Councils (RRCs) is set out in the individual Yukon First Nation Final Agreement Implementation Plans. Each RRC receives $75,000 per annum in 1992 constant dollars (or approximately $82,600 in current year dollars).

The RRCs fall under the jurisdiction of the Yukon Government. The Minister of Yukon Renewable Resources appoints the members, and administers and approves the RRC budgets. Under the provisions of the Yukon First Nation Final Agreement Implementation Plans, Canada accepted responsibility for the costs to the Yukon Government in the amounts set out in the Final Agreement Implementation Plans and funds the Yukon government for these amounts.

The Implementation Plans also provide that if the Minister requests a council to perform an activity that is not a part of the council's approved budget, that council may request additional funding and the Minister shall consider the request.

The number one implementation issue for all four RRCs is inadequacy of funding. All are agreed in their assertion that $82,600 is not enough as an annual base amount for them to carry out day-to-day operations. The councils, in their presentations to the IRWG, were very clear in their positions that in order to act effectively as the primary instrument for local renewable resources management, their responsibilities and work loads demand a full-time staff person. This is not affordable within the annual allocations. The Chair of the Fish and Wildlife Management Board, who attended the presentations, spoke in support of the RRCs need for increased funding. The RRCs assess their individual needs as follows: Alsek Renewable Resources Council at $117,880, Mayo District Renewable Resources Council at $158,390, Teslin Renewable Resources Council at $140,000 and North Yukon Renewable Resources Council at $166,000. North Yukon Renewable Resources Council figures were itemized, but provided only as a verbal presentation. Alsek, Mayo and Teslin Renewable Resources Councils made detailed written presentations which included information on actual expenditures as well as additional estimated requirements.

An anomaly among board funding arrangements that should be noted is that RRC funding was not pro-rated for 1994-1995. Councils received a full year's funding from Yukon even though there were only six weeks left in the fiscal year. Under the contractual agreement set out in sections 12 and 13 of each Yukon First Nation Final Agreement, the parties agreed that the payment by Canada

to Yukon of $75,000 per annum (1992 constant dollars) fulfills Canada's obligation, subject to any amendments of the plan, to provide funding to the RRCs for the first 10 year period. The first 10 year period is February 14, 1995 to February 13, 2005. Therefore, RRCs will need to arrange their budgets in such a way as to ensure that the funding they receive covers the full 10-year period.

Yukon Department of Renewable Resources reviewed the funding submissions made by the RRCs to the IRWG. The Department concluded that the current allocation the RRCs receive is not a sufficient base to effectively maintain essential operations. It concurs with the RRCs' assessment that, for the Councils to operate effectively, they require at least one full-time staff person. The Department of Renewable Resources also concludes that for a RRC to pay the salary and benefits of a administrative-technical full-time staff person and to provide for training for staff and board members, members' honoraria and travel expenses, office expenses, office equipment, professional services and communications costs requires a minimum of $103,810 annually. This proposed budget is based on honoraria rates of $125 per diem for members and $187.50 per diem for the chair, which were the rates used by the parties to establish the original budget. An additional $9,700 is proposed for the North Yukon Renewable Resources Council due to higher costs generated by its isolated location.

In reaching its conclusions, the Department of Renewable Resources observed that Yukon First Nations have been assisting RRCs by providing reasonable office rent and access to photocopy machines. If these Councils were required to purchase their own machines and find separate rental accommodations, costs would be considerably higher.

The Fish and Wildlife Management Board also supports increased funding for the RRCs.

As a non-financial way to assist RRCs, the IRWG believes that joint annual work planning and priority setting by government agencies and the Councils would help RRCs better plan their activities and help to prevent work overload. This would also put the RRCs in a better position to request additional funding from government agencies should the agencies request them to do work that was not identified as part of the Councils' workplan.

Recommendations: The IRWG recommends that Canada review the recommended increase in funding to RRCs from the Yukon Department of Renewable Resources on an immediate basis; the IRWG also recommends that RRCs and government agencies collaborate to set priorities to alleviate demands on the Councils' limited resources.

Lapsed Funding

Over the first five years of implementation, DIAND's authority for funding boards under its jurisdiction (the YLUPC, SRB, DRB and Enrollment Commission) was the Contribution Agreement. One condition of this type of funding instrument is that in each fiscal year of the agreement, any funds which remain unspent at year end (March 31), are debts owing to the Crown which must be repaid. These are known as lapsed funds. Lapsed funds are no longer available to the recipient or to the department.

The Yukon, the Council of Yukon First Nations and First Nation representatives on the IRWG hold the view that, under the implementation contract, the boards are entitled to the use of all the funding allocated to them under the UFA Implementation Plan, regardless of the provisions of Canada's funding authorities. They take the position that if, at any time before the expiry of the implementation contract (February 14, 2005), any of the affected boards requires the lapsed funds to meet its mandate, Canada should be obliged to restore this funding.

New Federal Funding Instrument

Beginning with the 2000-2001 fiscal year, DIAND has obtained authority to use a Flexible Transfer Payment (FTP) to replace the contribution agreement as the instrument for funding boards. Under the provisions of this instrument, boards may retain unexpended funds for use in future years, provided they meet their obligations under the FTP. This instrument should greatly reduce further incidents of lapsed funding.

Chapter 6

Amendments to Implementation Plans

As noted earlier, the Umbrella Final Agreement (UFA) forms the basis and constitutes the main substance of each Yukon First Nation Final Agreement. However, when it comes to the implementation of these provisions, the parties recognized that most UFA provisions (provisions common to all agreements) were obligations that needed to be addressed on a First Nation-by-First Nation basis. Thus, for implementation planning purposes, these provisions were included in the individual Yukon First Nation Implementation Plans and not the UFA Implementation Plan. The UFA Implementation Plan addresses only those provisions that are Yukon wide and where the responsible party for Yukon First Nations was identified as the Council of Yukon First Nations.

The first four Yukon First Nations collaborated on the development of their implementation plans and agreed to a common approach with respect to the activity sheets and annexes. These plans formed the templates for the negotiation of the subsequent Implementation Plans with Little Salmon/Carmacks First Nation (LSCFN), Selkirk First Nation (SFN) and Tr'ondëk Hwëch'in (TH).

The negotiation of these subsequent Implementation Plans has resulted in changes to the activity sheets and annexes which the first four Yukon First Nations believe are improvements over those in their agreements. A list of these can be found in Appendix 2 attached to this report.

Recommendation: The IRWG recommends that the parties amend the Implementation Plans of the first four First Nations to include the revised activity sheets.

Other Proposed Amendments

1) **16.8.11:** Designation of Category I traplines: no activity sheet currently exists. The IRWG proposes that one be drafted to clarify the process. Also it is suggested that the schedule of Category I traplines be updated to reflect changes over the last five years.

2) **13.2.1.4** and **13.12.1.5:** Designated Heritage Sites: current activity sheets covering these activities refer to Heritage Sites. The activities relate to Designated Heritage Sites which are specifically defined in the Final Agreements and therefore should be changed to reflect this difference.

3) **Umbrella Final Agreement ANNEX A – 20.7.1:** Amendment to confirm the FTA as the mechanism for paying property tax assistance.

4) **Yukon First Nation Final Agreement Implementation Plan ANNEX B – Regional Land Use Planning Councils:** Possible amendment to Yukon First Nation Final Agreement Implementation Plans to remove references to contribution agreements as the funding instrument, and replace with Flexible Transfer Payment (FTPs) which will allow for retention of year-end surpluses until the completion of the land use plan.

Conclusions

Overall, the first five years of implementation of the first four Final Agreements have been very positive, despite setbacks and frustrations that have occurred. The Final Agreements are comprehensive and complex and have presented many new challenges to Government and Yukon First Nations governments alike. This wide range of issues, all apparently demanding immediate attention, represented a steep learning curve for implementors of the Agreements, especially Yukon First Nation government staff who were facing many of these challenges for the first time. Canada and Yukon have also had their own challenges as the Agreements set out a whole new way of conducting business to which it had to adjust in many instances.

As noted in the report, the result of all this has been a slower pace to implementation than was envisioned by the agreement and implementation plan negotiators. However, in many instances, the occasionally prolonged and painful process of grappling with new implementation challenges resulted in the clarification and resolution of issues and in the development of understanding and processes between the parties which will smooth the road for future implementation.

Funding has also been an issue over the first five years for Yukon First Nations and for the Renewable Resources Councils. The five-year review process has assisted in addressing Yukon First Nation funding concerns, and the IRWG urges Canada to address the situation with respect to RRC funding.

The Final Agreements have worked well for Yukon First Nations, raising their profile, increasing their influence and ensuring them a greater voice in issues that affect their lives. The Agreements have also helped to create positive government-to-government relations between Yukon, Canada and Yukon First Nation governments and are developing into a partnership approach to the management of issues of mutual concern.

The Implementation Plans have been helpful tools in focussing the parties on the action items of the Final Agreements. They have also proved to be indispensable for monitoring implementation of the Agreements and for clarifying roles and responsibilities as well as the expectations of the parties with respect to timing and process.

The IRWG hopes that the recommendations proposed to the parties on implementation issues will assist them in arriving at solutions. The IRWG also hopes that the amendments proposed to the Implementation Plans will help to improve what are already useful implementation tools.

List of Acronyms

ATIP	Access to Information and Privacy
CAFN	Champagne and Aishihik First Nations
CYFN	Council of Yukon First Nations
DFO	Department of Fisheries and Oceans
DIAND	Department of Indian Affairs and Northern Development
DRB	Dispute Resolution Board
EDA	Economic Development Agreement
EIS	Ecological Integrity Statement
EFF	Extra Fire Fighters
FAIP	Final Agreement Implementation Plan
FTAs	Financial Transfer Agreements
FTE	Full Time Equivalent
FWMB	Yukon Fish and Wildlife Management Board
GPNB	Yukon Geographical Place Names Board
HOG	Home Ownership Grant
IRWG	Implementation Review Working Group
IWG	Implementation Working Group
LSCFN	Little Salmon/Carmacks First Nation
LSD	Legal Surveys Division (Natural Resources Canada)
NND	First Nation of Nacho Nyak Dun
PSSSL	Proposed Site-Specific Settlement Lands
PSTA	Programs and Services Transfer Agreement
RLUPC	Regional Land Use Planning Commission
RPSP	Representative Public Service Plan
RRC	Renewable Resources Council
SFN	Selkirk First Nation
SLC	Settlement Land Committee
SMA(s)	Special Management Area(s)
SRB	Yukon Surface Rights Board
SSC	Salmon Sub-Committee
TH	Tr'ondëk Hwëch'in
TPC	Training Policy Committee
TTC	Teslin Tlingit Council
UFA	Umbrella Final Agreement
UFAIP	Umbrella Final Agreement Implementation Plan
VGFN	Vuntut Gwitchin First Nation
YDAB	Yukon Development Assessment Board
YHRB	Yukon Heritage Resources Board
YLUPC	Yukon Land Use Planning Council
YSC	Yukon Salmon Committee (informal name for SSC)
YWB	Yukon Water Board

Appendix 1: Review Guidelines

Umbrella Final Agreement Implementation Plan and First Nation Final Agreement Implementation Plan Review Guidelines

1. Introduction

Pursuant to section 24.0 of the Umbrella Final Agreement Implementation Plan (UFAIP) and section 19.0 of the First Nation Final Agreement Implementation Plans (FAIP), the parties shall complete a review of the Implementation Plans in the fifth year following the Effective Date based on guidelines agreed to by the parties. The review shall be conducted by the Designated Representatives of the parties.

It has been assumed that the Self-Government Agreement Section 6.6 and Implementation Plan will be reviewed in a separate process and conducted pursuant to separate terms of reference developed by the parties.

In this document, the term "Review" refers to the 5-year review of the UFAIP and FAIP. The purpose of this document is to provide a work plan and guidelines for the Review.

2. Purpose and Scope

The Review involves the Implementation Plans for the Umbrella Final Agreement and the First Nation Final Agreement for Champagne & Aishihik First Nations, Teslin Tlingit Council, First Nation of Nacho Nyak Dun, and Vuntut Gwitchin First Nation. The Review is an opportunity for the parties to assess the effectiveness of implementation and to recommend to the parties any amendments to the Implementation Plans to improve implementation.

The Review should be viewed as an opportunity and a challenge after four years of implementation, to assess the realism and effectiveness of our prior planning effort and to provide a better product, based on experience, useful for the next five years of implementation.

The parties to the Review shall, pursuant to section 24.0 of the UFAIP and section 19.0 of the FAIP, review the Plan, Activity Plans and Coordination Sheets to determine the adequacy of the provision of the Plans and of the implementation funding provided under the Plans.

In accordance with section 7.0 of the FAIP, Annex E Coordination, the general review process shall be carried out simultaneously and in a coordinated fashion with other review processes. Coordination will also be required where cross-references between agreements have been provided on the Activity Plans (section 10.0 of the FAIP).

Further, the Review shall be timed in such a way as to provide input to negotiations of the new Self-Government Financial Transfer Agreement.

The results of the Review will address recommendations to solve implementation problems and shall be used to promote more effective implementation.

3. Areas of Review

Implementation Plans

The parties will review the Implementation Plans to determine the adequacy of the provisions of the Plans including the activity sheets, annexes and covering documents.

Funding

The parties will assess the adequacy of funding provided under the Implementation Plans to implement the provisions of the Agreements.

Boards and Committees

The parties will review the adequacy of the provisions of the Plans dealing with Boards and Committees to determine whether the arrangements for training, structure, support and other matters have enabled the Boards and Committees to satisfactorily fulfill their mandates as set out in the Agreements.

Multi-Party Implementation Working Group

The parties will review the function and mandate of the multi-party Implementation Working Group (IWG) and recommend improvements to the current process to more effectively resolve issues, concerns and disputes arising during implementation.

4. Overall Design

Existing information will be used where possible to carry out the Review. One basis of the Review will be the status reporting by the parties on the responsibilities and obligations carried out by the parties to implement the activity sheets. While reviewing the activity sheets, the parties will consider the cross referencing of obligations and examine whether activity sheets need to be amended to clarify linkages between the activities.

The Review will also involve identifying areas of concern brought to the Multi-Party IWG as documented in the minutes.

The parties agreed to assemble and analyze existing information that is available regarding the operations of the boards and committees. Once the available information is gathered, the parties will decide what other information is required and how to engage boards and committees in the review process.

The parties will conduct a comparative analysis of the activity sheets for the first four FAIP as compared to the activity sheets in the FAIP for the Little Salmon/Carmacks First Nation, Selkirk First Nation and Tr'ondëk Hwëch'in to identify and recommend changes to the first four Implementation Plans.

The process to assess the adequacy of implementation funding will include the collection and presentation of First Nations financial expenditures and revenues by the First Nation Review working group representatives, and a review and analysis of the financial information by all of the working group representatives.

The parties will:

- work cooperatively to problem solve and develop creative solutions to address implementation issues that can be recommended as changes to the Plans;
- recognize the sensitivity, and in some cases, the confidentiality of information that may be exchanged and discussed during the Review. Information-sharing necessarily may be limited because of confidentiality requirements set out in legislation. Information that is to be treated as confidential will be clearly identified as such;
- jointly develop and issue any public and media communications that may be required about the progress of the Reviews;
- attempt to reach consensus while respecting that the parties may disagree;
- maintain, to the extent possible, consistent representation throughout the review process;
- alternate hosting the working group review sessions and preparing summary minutes that clearly identify the agreed to action items.

The results of the Review carried out by the Working Group will be presented in an Implementation Plan Review Report. Conclusions and recommendations will be provided to the parties for their review. Approval and implementation of amendments or other required action will be the responsibility of the parties.

Areas that will be covered in the Report include:

- ◊ suggestions to revise the activities, planning assumptions, work plans, timing, etc. and to include new activities that promote more effective implementation;
- ◊ recommendations to solve implementation problems, issues and concerns identified by the parties;
- ◊ documentation of funding adequacy and, if inadequacies are identified, possible options to address the inadequacies;
- ◊ identifications of the impact on implementation of any unforeseen events that have arisen since the original implementation planning exercise;
- ◊ documentation of experience with implementation that may benefit other First Nations by providing a comprehensive understanding of the reality surrounding implementation.

Appendix 2: Proposed Amendments

Proposed List of Amendments to the Final Agreement Implementation Plans

Five-Year Implementation Review of the First Four First Nations Final Agreements – December 2000

X	First Nation has requested the wording on the Activity Sheet be replaced with new wording described on the TH FAIP Activity Sheet.
N/A	Not applicable to the First Nation.
TH FAIP	Tr'ondëk Hwëch'in Final Agreement Implementation Plan.

Activity Sheet	CAFN	NND	VGFN	TTC	Explanatory Comments
Ch 2 Sched B 3.1, 3.2 – Dispute resolution of Overlap Claims	X	X	X	X	TH FAIP wording in the 2nd activity gives the responsible parties the discretion to refer the dispute to arbitration: "If no agreement at mediation, *at discretion*, refer dispute to arbitration.
Ch. 2 Sched B 6.1 – Traplines in Overlap Area	X	X	N/A	N/A	TH FAIP wording in the 3rd activity: *"If agreement reached or if more than 50 percent of trapline is in First Nation Traditional Territory"* be included to clarify purposes.
5.6.3 – Pymt of royalties and non-refunded rents on Category A Settlement Lands	X	X	X	X	TH FAIP has two additional responsibilities and activities which require Government to determine whether royalties and/or non-refunded rents are being collected on Cat. A Settlement Lands.
5.6.4 – Pymt of non-refunded rents on Category B and Fee Simple Settlement Lands	X	X	N/A	X	Same as above and for Cat. B and Fee Simple Settlement Lands.
5.6.9 – Consultation on Encumbering rights	X	X	X	X	TH FAIP has a new activity to develop arrangements and procedures for Consultation. There are also new planning assumptions.

Activity Sheet	CAFN	NND	VGFN	TTC	Explanatory Comments
6.1.6 – Conditions of access	X	X	X	X	TH FAIP has an additional activity which requires the FN to prepare and participate in any Surface Rights Board or court process.
7.3.1 – Expropriation location and extent	X	X	X	X	TH FAIP has several changes to responsibilities, activities, and timing.
10.3.3 – Establish Special Management Area (SMA)	X	X	X	X	TH FAIP has separate activity sheets describing the process when the proposed SMA includes Settlement Land and when it does not include Settlement Land.
10.4.8 – Amendment to SMA agreement	X	X	X	X	Add TH FAIP activity sheet.
10.4.9 – Appending negotiated SMA agreement	X	X	X	X	Add TH FAIP activity sheet.
11.4.2 – Nominees to Regional Land Use Planning Commission (RLUPC)	X	X	X	X	Add the consensual process in TH FAIP whereby the parties determine the nominees to a RLUPC.
13.3.2 – Ownership and management of Heritage Resources	X	X	X	X	Replace with the TH FAIP activity sheet to clarify responsibilities, activities and timing.
13.4.1 – Strategic planning to allocate Government program resources	X	X	X	X	The Yukon-wide strategic planning process has been changed in TH FAIP to a process carried out with the individual First Nation.
13.4.5 – Consultation on Legislation and related policies	X	X	X	X	TH FAIP has an additional activity to develop arrangements and procedures for Consultation. Also there is a planning assumption that these will include the provision for revising these arrangements and procedures.
13.4.8 – Preparation of inventory of Heritage Resources and Sites	X	X	X	X	TH FAIP has two additional activities to notify and seek input from the Yukon Heritage Resources Board, and for the Board to review and make recommendations to the parties.
13.8.2 – Consider other resource users in the management of interpretive and research activities	X	X	N/A	X	Add TH FAIP activity sheet.

Activity Sheet	CAFN	NND	VGFN	TTC	Explanatory Comments
13.8.3 – Management of research activities at sites	X	X	X	X	TH FAIP has additional activities to establish further guidelines and conditions for a permit system, to institute the permit system, and to monitor and enforce the guidelines and conditions.
13.8.7.4 – 13.8.7.6 – protection of Documentary Heritage Resources	X	X	X	X	TH FAIP has an additional activity to develop arrangements and procedures for reporting of accidental discoveries.
13.9.1 – Establish procedures to manage Burial Sites	X	X	X	X	TH FAIP has separate activity sheets applicable to both Settlement Land and non-Settlement Land.
13.10.3 – Consultation on Legislation and related policies	X	X	X	X	Add TH FAIP activity sheet.
13.11.3 & 13.11.4 – Naming of features and place names	X	X	X	X	TH FAIP has an additional activity and a revised planning assumption to notify the First Nation and Yukon Geographic Place Names Boards of map production.
13.12.1.5 – Contracting for Designated Heritage Sites	X	X	X	X	Add the additional first activity and the planning assumption in TH FAIP section 13.12.1.7, which is the same provision as 13.12.1.5.
14.7.4 – Water licences renewal or replacement	X	X	X	X	TH FAIP has an additional activity which requires the Yukon Water Board to provide written notice. Also there is a planning assumption that the Board is aware of its obligation.
16.3.3.2 – Consultation prior to imposing a limit in Legislation	X	X	X	X	There are additional activities in TH FAIP to develop arrangements and procedures for Consultation and to notify the First Nation of the decision.
16.4.7 – Provision of proof to Harvesting rights	X	X	N/A	X	TH FAIP activity sheet provides more clarification.
16.7.17.12 – SSC to Consult and recommend on Salmon	X	X	X	X	Add TH FAIP activity sheet.

Activity Sheet	CAFN	NND	VGFN	TTC	Explanatory Comments
16.9.17 – Explore ways to improve surplus meat distribution	N/A	X	N/A	N/A	The current activity sheet involves all First Nations, the Renewable Resources Councils and the Fish & Wildlife Management Board. In the TH FAIP the First Nation and Government are the responsible parties to develop the options.
16.10.15 – Additional commercial Salmon licences	N/A	X	X	X	TH FAIP removes DFO from any responsibility to determine how licences will be allocated. Also the planning assumptions are revised.
16.11.3.4 – Allocation of traplines	X	X	N/A	X	TH FAIP outlining a process to establish the allocation criteria and responsibility to assign Category 1 and 2 traplines.
16.11.8 & 16.11.9.1 – Process to designate additional Category 1 Traplines	X	X	N/A	X	Add TH FAIP activity sheet.
16.11.10.4 – Trade and redesignate Category 1& 2 traplines	X	X	N/A	X	Add TH FAIP activity sheet.
16.11.10.5 – Maintain Trapline register	X	X	N/A	X	In TH FAIP, the activities are ordered differently. Also the First Nation, Yukon and the Renewable Resources Council are responsible to maintain the respective trapline registers.
16.13.2 – Trapper training program	X	X	X	X	TH FAIP has an additional activity to assess programs and redesign in collaboration with responsible parties.
17.5.1 – Preparation of Forest Resources management plans	N/A	X	X	N/A	In TH FAIP, the responsibilities, activities and timing are clearly defined.
17.5.3 – Establish the order of Forest Resources Management plans	N/A	X	X	N/A	In TH FAIP, the timing has been changed from "Within one year of the Effective Date of Settlement Legislation", to "as soon as practicable".
17.7.1 – Use of pesticides or herbicides on Settlement Land	X	X	X	X	TH FAIP has an additional activity which requires the First Nation to notify Government of action taken.

Activity Sheet	CAFN	NND	VGFN	TTC	Explanatory Comments
17.7.2 – Use of pesticides or herbicides on Crown lands	X	X	X	X	TH FAIP has an additional activity which requires Government to notify the First Nation of action taken.
17.7.3 – Control pest or disease problems on Settlement Land	X	X	X	X	Add TH FAIP activity sheet.
17.8.2 – Consultation on forest fire fighting priorities	X	X	X	X	TH FAIP has an additional activity which requires Government to revisit priorities at the request of the First Nation. Also there is a planning assumption which requires the parties to involve the Renewable Resources Council as appropriate.
17.14.1 – Public tender notice for forestry management	X	X	X	X	TH FAIP has an additional activity which requires contracting arrangements and procedures to be developed.
17.14.2.2 & 17.14.2.3 – Silviculture economic opportunities.	X	X	X	X	TH FAIP has a new activity which requires contracting arrangements and procedures to be developed.
17.14.2.8 – hiring of First Nation citizens to fight forest fires	X	X	X	X	Same as TH FAIP section 17.14.2.10.
18.1.2 & 18.1.3 – Mineral Right and Specific Substances Right conflicts	X	X	X	X	TH FAIP has additional activities to refer dispute to the Surface Rights Board and to participate in its process.
18.2.4 – Location of alternative quarries on non-Settlement Land	X	X	X	X	TH FAIP has additional activities for Government to provide results of analysis to the First Nation.
22.3.1 – Economic development opportunity plan	N/A	X	X	X	TH FAIP activity sheet is more complete with respect to establishing a tripartite planning group, developing a workplan, etc.
22.4.1 – Facilitating training and professional development	X	X	X	X	TH FAIP has some additional activities for the responsible parties to exchange information and establish arrangements.
22.4.2 – Apprenticeship programs	X	X	X	X	The planning process in the current activity sheet involves all First Nations. In the TH FAIP, the responsible parties are the First Nation and Yukon.

Activity Sheet	CAFN	NND	VGFN	TTC	Explanatory Comments
22.5.10 – Structuring contracts	X	X	X	X	TH FAIP has an additional activity for Government to provide further information on contracting.
22 Sch A Pt I, 7.1, 7.2, 7.3 – Agreements to effect Chapter 22	N/A	X	N/A	N/A	TH FAIP has three additional activities which are more explicit.
22 Sch A, Pt II,1.1 – Commercial freshwater fish licenses	X	X	X	X	TH FAIP activities are more explicit.
22 Sch A, Pt II, 2.1 – Commercial wilderness adventure travel	X	X	X	X	Same as above.
22 Sch A, Pt II,3.1 – Commercial freshwater sports fishing	X	X	X	X	Same as above.
22 Sch A, Pt II, 4.2 – Consult on variance of licences/permits	N/A	N/A	N/A	N/A	In TH FAIP "Government" is named as the responsible party rather than only "Yukon".
APP A 3.2.6 – Rehabilitate Settlement Land used as a haul road	X	X	N/A	X	Add the TH FAIP activity sheet.
APP A 3.2.7 – Alteration to Settlement Land re: Specified Access Right	X	X	N/A	X	Same as above.
APP A 3.2.9 – Consult on closure of Realigned Roadway	X	X	X	X	Same as above.